

CIVIL RIGHTS COMMISSION

HEARINGS
BEFORE THE
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
EIGHTY-EIGHTH CONGRESS
FIRST SESSION
ON
S. 1117 and S. 1219
BILLS RELATING TO EXTENSION OF THE CIVIL RIGHTS
COMMISSION

MAY 21, 22, 23; JUNE 5, 6, AND 12, 1963

Printed for the use of the Committee on the Judiciary



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CIVIL RIGHTS COMMISSION

TUESDAY, MAY 21, 1963

U. S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:40 a.m., in room 2228, New Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee) presiding.

Present: Senators Ervin, Bayh, Keating, and Fong.

Also present: William A. Creech, chief counsel and staff director; and Bernard Waters, minority counsel.

Senator ERVIN. The subcommittee will come to order.

Today the Subcommittee on Constitutional Rights begins several days of hearings on two bills, S. 1117 and S. 1219, which would extend the life and expand the powers of the U.S. Commission on Civil Rights.

The text of the bills, an analysis of each, prepared by the Library of Congress, and a comparison between the two, also prepared by the Library of Congress, will be printed at this point in the record.

(S. 1117 and S. 1219, referred to, follow:)

[S. 1117, 88th Cong., 1st sess.]

A BILL To extend for four years the Commission on Civil Rights as an agency in the executive branch of the Government, to broaden the scope of the duties of the Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commission on Civil Rights Amendments Act of 1963".

SEC. 2. Section 102 of the Civil Rights Act of 1957 (42 U.S.C. 1975a) is amended to read as follows:

"RULES OF PROCEDURE OF THE COMMISSION, HEARINGS

"SEC. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

"(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

"(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

"(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony or summary of such evidence or testimony in executive session; and in the event the Commission determines that such evidence or testimony shall be given at a public session, then it shall (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

"(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses.

"(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than \$1,000, or imprisoned for not more than one year.

"(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

"(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

"(j) A witness attending any session of the Commission shall receive \$6 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 10 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of \$10 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

"(k) The Commission shall not issue any subpoena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpoenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpoenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process."

Sec. 8. Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a)) is amended to read as follows:

"Sec. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of \$75 per day for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b-2)."

Sec. 4. Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b)) is amended to read as follows:

"(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with the provisions of the Travel Expense Act of 1949, as amended (5 U.S.C. 835-42)."

Sec. 5. Section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975) is amended to read as follows:

"DUTIES OF THE COMMISSION

"Sec. 104. (a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution, and

"(4) serve as a national clearinghouse for information, and provide advice and technical assistance to Government agencies, communities, industries,

organizations or individuals, in respect to equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice.

The Commission may, for such periods as it deems necessary, concentrate the performance of its duties on those specified in either paragraph (1), (2), (3), or (4) and may further concentrate the performance of its duties under any of such paragraphs on one or more aspects of the duties imposed therein.

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than September 30, 1967.

"(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist."

SEC. 6. (a) Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975(a)) is amended by striking out in the last sentence thereof "\$50 per diem" and inserting in lieu thereof "\$75 per diem."

SEC. 7. Section 105(g) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(g)) is amended to read as follows:

"(g) In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof."

SEC. 8. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d) as amended by section 401 of the Civil Rights Act of 1960 (42 U.S.C. 1975d(h)) is amended by adding a new subsection at the end to read as follows:

"(i) The Commission shall have the power to make such rules and regulations as it deems necessary to carry out the purposes of this Act."

[S. 1219, 88th Cong., 1st sess.]

A BILL To make the Commission on Civil Rights a permanent agency in the executive branch of the Government, to broaden the scope of the duties of the Commission, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commission on Civil Rights Amendments Act of 1963."

SEC. 2. (a) Section 104(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975) is amended by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and by adding at the end thereof the following:

"(4) serve as a national clearinghouse for information, and provide advice and technical assistance to Government agencies, communities, industries, organizations, or individuals, in respect to equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice."

(b) Section 104(b) of such Act (42 U.S.C. 1975(c)) is amended to read as follows:

"(b) The Commission shall, not later than January 31 of each year, submit a report to the President and the Congress setting forth its activities and findings during the preceding calendar year and its recommendations with respect thereto. The Commission may submit such other reports to the President and to the Congress at such times as the Commission and the President deem advisable."

(c) Subsection (c) of section 104 of such Act (42 U.S.C. 1975(c)) is hereby repealed.

Sec. 8. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d) as amended by section 401 of the Civil Rights Act of 1960 (42 U.S.C. 1975d(h)) is amended by adding a new subsection at the end to read as follows:

"(1) The Commission shall have the power to make such rules and regulations as it deems necessary to carry out the purposes of this Act."

MAY 10, 1963.

From: American Law Division, Library of Congress.

Subject: Analysis of S. 1117 and S. 1219 (88th Cong., 1st sess.) and comparisons of them with each other and with existing law.

S. 1219

Section 1

The act may be cited as the "Commission on Civil Rights Amendments Act of 1963".

NOTE.—This is identical with section 1 of S. 1117.

Section 2(a)

To the three existing duties of the Commission section 2(a) would add a fourth—that it shall serve as a national clearinghouse for information and provide advice and technical assistance to anyone with respect to equal protection of the laws in any field, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice.

Existing law, section 104(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(a)) assign to the Commission three duties:

(1) to investigate written allegations of denial of the rights to vote by reason of color, race, religion, or national origin;

(2) to study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) to appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

NOTE.—The language of the new duty assigned the Commission is identical with that in section 5 of S. 1117. S. 1117 however, gives the Commission discretion during any period to concentrate on the performance of any aspect of any one of the four duties assigned to it.

NOTE.—The parenthetical reference to the code on page 1, line 6, of S. 1219 should read "42 U.S.C. 1975c(a)".

Section 2 (b) and (c)

These subsections would have the effect of making the Commission a permanent agency by amending existing law (sec. 104b of the 1957 act as amended, 42 U.S.C. § 1975c(b) (Supp. III, 1959-61)) to require the Commission to submit annual reports not later than January 31 of each year and such other reports as the Commission and the President deem advisable instead of submitting such interim reports as the Commission and the President deem advisable and a final report not later than September 30, 1963. They would also repeal section 104c of the 1957 act (42 U.S.C. § 1975c(c)) which provides that the Commission shall cease to exist 60 days after the submission of its final reports.

NOTE 1.—S. 1117, instead of making the Commission a permanent agency, would simply extend the date for submitting its final report from September 30, 1963, to September 30, 1967.

NOTE 2.—The code citation on page 2, line 8 should read: "42 U.S.C. 1975c(h)".

NOTE 3.—The code citation on page 2, lines 17-18 should read: "42 U.S.C. 1975c(c)".

Section 3

This section would amend section 105 of the 1957 act, as amended (42 U.S.C. § 1975(d)), which sets forth the housekeeping and miscellaneous powers of the Commission by adding a new subsection (1), giving the Commission the power to make such rules and regulations as it deems necessary to carry out the purposes of the act.

NOTE.—Although existing law contains no specific provision empowering the Commission to make such rules and regulations, see *Hannah v. Larche*, 363

U.S. 420 (1960), upholding the validity of rules of procedure adopted by the Commission for the conduct of hearings on alleged Negro voting deprivations.

S. 1117

Section 1.

The act may be cited as the "Commission on Civil Rights Amendments Act of 1963."

NOTE.—This is identical with section 1 of S. 1219.

Section 2.

This section reenacts section 102 of the Civil Rights Act of 1957, dealing with Rules of Procedure of the Commission and Hearings (42 U.S.C. § 1975a) but makes the following amendments:

(a) Under existing law if the Commission determines that evidence or testimony at any hearing may tend to defame or incriminate any person the evidence or testimony must be received in executive session and the Commission must afford such person an opportunity voluntarily to appear as a witness. Section 102(b) of this bill would require the Commission to afford such person an opportunity to appear voluntarily as a witness only "in the event the Commission determines that such [defaming or incriminating] evidence or testimony shall be given at a public session" (p. 2, lines 18-20.).

(b) By adding the words "or summary of evidence or testimony" to section 102(g) (42 U.S.C. § 1975a(g)) (p. 3, lines 3-4) this bill would prohibit anyone from releasing any summary of evidence or testimony taken in executive session without the consent of the Commission. The prohibition in existing law applies only to evidence or testimony, not to summaries.

(c) By amending section 102(j) (42 U.S.C. § 1975a(j)) to increase the daily fee for witnesses from \$4 to \$6; their travel allowance from 8 cents to 10 cents a mile; and their addition allowance for overnight attendance from \$10 to \$12. The only changes made in existing law (42 U.S.C. § 1975a(j)) are the numbers.

(d) Existing law (42 U.S.C. sec. 1975a(k)) prohibits the Commission from serving a subpoena which would require the presence of the party subpoenaed at a hearing to be held outside the State where a witness is found or resides or transacts business. Subsection (k) of section 102, by adding the words on page 4, lines 13-20, would permit the issuance of subpoenas for hearings to be held in a State where a witness is domiciled or has appointed an agent for receipt of process and would also permit service of subpoenas for hearings to be held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process even though the hearings may be outside the State.

Section 3

Existing law (42 U.S.C., sec. 1974(a)) establishes the pay of a Commissioner at \$50 for each day spent on the work of the Commission, authorizes reimbursement for actual and necessary travel expenses and an allowance of \$12 a day in lieu of actual expenses for subsistence when away from his usual place of residence. Section 3 of the bill would increase the compensation to \$75 a day, authorize payment of actual travel expenses (eliminating the words "and necessary" from existing law), and per diem in lieu of subsistence in accordance with section 5 of the Administrative Expenses Act of 1946 as amended (5 U.S.C., sec. 73b-2, 836 (supp. III, 1959-61)) which sets a maximum of \$10 a day within the United States.

Section 4

Existing law (42 U.S.C., 1975(b)) provides that members of the Commission otherwise in the Government service shall receive no additional compensation but "shall be reimbursed for actual and necessary travel expenses and shall receive a per diem allowance of \$12 in lieu of actual expenses for subsistence" when away from their usual places of residence. Section 4 of the bill would provide that such Commission members "shall be paid actual travel expenses and per diem in lieu of subsistence expenses" in accordance with the provisions of the Travel Expense Act of 1949, as amended (5 U.S.C., 44835-42) which is in effect an increase of per diem from \$12 to \$16.

Section 5

This section would make three changes in section 104 of the Civil Rights Act of 1957 (42 U.S.C., sec. 1975c):

(a) It would give the Commission a fourth duty; namely, to serve as a national clearinghouse and source of advice and technical assistance to anyone

with respect to equal protection of laws. This provision of section 5, on page 6, lines 10-16, is identical with the provisions of section 2(a) of S. 1219 on page 2, lines 1-7 of that bill.

(b) It would give the Commission discretion to concentrate for such periods as it deems necessary on any aspect of any of the duties set forth in 42 U.S.C. section 1975c(a).

(c) It would extend the date of the Commission's final report from September 30, 1963, to September 30, 1967, but continue to provide that the Commission cease to exist 60 days after submission of its final report.

NOTE. The code citation on page 5, line 18, should read "42 U.S.C. 1975c".

Section 6

Existing law (42 U.S.C., sec. 1975d(a)) authorizes the Commission to appoint consultants at rates not in excess of \$50 per diem. This section would increase the maximum pay for consultants from \$50 to \$75 per diem.

NOTE. The code citation on page 7, line 7, should read "42 U.S.C. 1975d (a)".

Section 7

Existing law (42 U.S.C., sec. 1975d(g)), dealing with aid of courts in enforcing Commission subpoenas, confers jurisdiction on the court in the district where a contumacious witness "is found or resides or transacts business." This section would change the quoted language to "is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process" (p. 7, lines 18-20). No other change is made.

Section 8

This section would make a change identical with that providing in section 3 of S. 1219. It would give the Commission the power to make such rules and regulations as it deems necessary to carry out the purposes of the act. The same comment is appropriate here. Although existing law contains no specific provision empowering the Commission to make such rules and regulation, see *Hannah v. Larche*, 363 U.S. 420 (1960) upholding the validity of rules of procedure, adopted by the Commission for the conduct of hearings on alleged Negro voting deprivations.

VINCENT A. DOYLE, *Legislative Attorney.*

Senator ERVIN. The hearings have been scheduled with a view to insuring that the widest possible cross section of views is received.

The attorneys general of the various States have been asked for their opinions concerning the necessity for and/or the desirability of the legislation before us. The responses will be included in the record of the hearings. The subcommittee has attempted to schedule all who have requested to testify; these include Members of Congress, other Government officials, representatives of organizations, and private individuals. In addition, the subcommittee has invited the Attorney General of the United States, and the chairman of the Commission on Civil Rights, to appear on behalf of the Department of Justice and the Commission, respectively.

At the outset, I would like to outline a few of the areas upon which the record should build.

Long before the Commission published its recommendation concerning Mississippi a few weeks ago, it was my opinion that the Commission is neither desirable nor necessary; and even if it were the former, it most assuredly is not the latter since its functions only duplicate in part those of the Department of Justice. The Commission's recent unconstitutional recommendation points up not only its lack of understanding of our governmental processes but a total disregard of the Constitution its members have sworn to uphold. The Commission's interim report on Mississippi is a very shocking example of its recommendations, which will be one of the areas of its operations to be reviewed during these hearings.

At one point in that report it was recommended—

that the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi, until the State of Mississippi demonstrates its compliance with the Constitution and the laws of the United States.

I was gratified that the President promptly repudiated the report, saying he neither had nor wanted such power as that the Commission suggested he use. The report also was repudiated by the Attorney General, by the distinguished majority leader of the Senate, and by a number of constitutional scholars, columnists, and newspapers. It is heartening for the country that so many of its leaders in this instance rose above the intense political pressure that invariably is exerted each time the Commission makes a recommendation.

However, even though the recommendation is now properly dead, it is relevant for the purposes of these hearings because it reflects on the very character of the Commission itself. The most disturbing aspect of this essentially punitive proposal is its abundantly clear unconstitutionality. This recommendation is doubly disturbing because it was proposed by a group whose alleged purpose is to defend, not destroy, the Constitution.

The President was asked to annex conditions to legislation which Congress never intended. The President, of course, has no legislative power at all; he therefore has no power to add terms to a grant which Congress has made. I do not think that even Congress could enact such a ridiculous restriction as that denying to 1 State out of 50 the use of Federal funds; it would seem to me a denial of due process of law to the citizens of Mississippi.

There is a further constitutional objection in that the President is asked to make a judicial determination of whether a State is denying rights of certain citizens, without any hearing being offered the accused. As the Washington Post said editorially:

The first (defect) is that it would seem to entail a bypassing of the courts by authorizing the President, or the Congress, to determine when a State's conduct violates the Constitution. This is essentially a judicial question. * * *

If adopted, the Commission's proposal would result in a thorough confusion of the balance of powers.

Aside from the constitutional issues, the recommendation seems to me so unwise that it is almost beyond comprehension. It is not only those who are alleged to have violated the Constitution who would be punished; as the Raleigh News & Observer has noted, "This proposal to starve all in order to force some to obey the laws would hit everybody, 'without distinction.'" Everybody would suffer—the white, the Negro, and the Indian. In the last paragraph of its report, the Commission states, in effect, that it does not wish to see the people of Mississippi suffer. However, if its proposal had been adopted, the only way it could avoid seeing the people suffer would be to turn its back. If agricultural surpluses were cut off to the State, it is not the white planter who would be hardest hit. If Federal aid for education in the impacted areas of Mississippi was eliminated, it is not the State officials whose education would suffer. The supposed sins of the guilty would be visited on the innocent, contrary to our principles that only wrongdoers are punished and then only after a hearing. The innocent would suffer greatest, and such action, un-

doubtedly, would foster an even greater breach between the Federal and State Governments.

At a time when we are pouring billions of dollars into a multitude of distant countries for the purpose of elevating their economic and social standards and maintaining political stability, it is inconceivable to me that we would deny all Federal grants of funds, presumably for similar purposes, to one of our own States.

Although its proposal relating to Mississippi may be its most spectacular, it is certainly not the only one which is unconstitutional or devoid of merit.

In its 1961 report on education, the Commission stated that private school "tuition grants—by the States—threaten the quality of public—school—education, even its existence." Yet, in the same report, the Commission recommended a reduction in Federal funds to public schools which are not completely integrated. I submit that this recommendation also threatens the quality and existence of public school education. In fact, if its Mississippi proposal were adopted, all Federal funds for education in Mississippi would be cut off. In essence, the Commission is advocating that which it decries—destruction of the quality and existence of the public schools. While it is castigating some States for actions which it alleged would also threaten the quality and existence of public schools, it calls upon the Federal Government to do precisely that. The Commission would visit the sins of the elders upon the children. To me, educational advances afford the best hope for a solution of our problems. Tolerance is born of knowledge, not ignorance. The Commission's position is the entirely untenable one that no schools are preferable to segregated schools.

In its 1961 report on voting, the Commission made recommendations which many law professors and the attorneys general of many States throughout the country rejected as violating the Constitution. If adopted, those proposals would abrogate State laws which the Supreme Court had specifically upheld for a century as being fair and valid. The proposals have been introduced in Congress again this year; and I hope they fare no better than they did last year when neither House passed a single bill recommended by the Commission.

It is not my intention to dwell here any longer on the many mischievous recommendations the Commission has made and the Congress in its wisdom has refused to accept. Suffice it to say that its proposals in no way justify continuation of the Commission.

The Commission's annual appropriation is just under \$1 million. At a time of huge budgetary deficits, I do not believe we can afford the luxury of the Commission's duplicating the work of the Justice Department. Obviously, the Commission's greatest efforts have been expended in investigating and analyzing the complaints of those who allege a deprivation of rights guaranteed by the Constitution and laws of the United States. However, the Department of Justice is charged not only with investigating and analyzing such complaints but also prosecuting any violations found. I fail to see how continuation of the Commission can be justified by its interference in the legitimate function of another agency of the Federal Government.

Nor has the Commission even investigated or reported on the complaints it received in a responsible manner. According to the Com-

mission, it has received 40 complaints from North Carolina since 1957. Each of these was turned over to the Civil Rights Division of the Justice Department. In not one case did the Justice Department find grounds for prosecution, and the complaints were returned to the Commission. I have personal knowledge that several of the complaints were wholly without foundation. Nevertheless, the Commission reported and publicized the allegations as if they were proven fact. North Carolina officials were made to look as if they were illegally depriving people of the right to vote. Yet I have never heard the Commission publicize the true story. Maybe the Commission is like the old justice of peace I once knew who would never hear but one side of a case because he was afraid he might get confused.

Even if it were conceded that the Justice Department needs the help of the Commission in investigating complaints, the inept manner in which complaints to it have been handled warrants its expiration.

However, these largely unsubstantiated complaints were in large part the basis of the Commission's reports; and the reports in turn are the greatest, though a questionable, contribution of the Commission.

In the 6 years of its existence, the Commission has turned out reports on employment, housing, voting, justice, equal protection, the Emancipation Proclamation, education in the South, education in the North, and education in general. I understand that publications on the Armed Forces and hospital segregation will appear shortly. Of course, this list does not include all the reports and abridgments of reports that the Commission has published or intends to publish; however, it is sufficient to note here that the quantity far exceeds the quality.

Not all of these reports are the work of the Commission itself. Even though it is charged by law with preparing and submitting interim reports, its two 1962 reports on education were prepared by private individuals who were paid approximately \$15,000 by the Commission on a contractual basis. This proves that the Commission is not indispensable even for the dubious reports it distributes. Private individuals were hired in the past to conduct a particular study; and, if the need arises, they could perform this function again.

The reports are presumably based on the legal research which the Commission is charged by law to conduct, as well as on complaints it receives. Nevertheless, instead of conducting the research itself, it paid \$90,000 to the Library of Congress to compile the Federal and State statutes pertaining to equal protection of the laws. Here we have an example of an executive agency farming out its work to the legislative branch. The Commission is not even indispensable for the research it is supposed to do.

However, even if we assume that all of the reports and all of the recommendations in those reports are exemplary, we face the inescapable conclusion that the work of the Commission is now complete. It has studied and reported on every conceivable area even remotely related to civil rights. Now its work is done, and there is no reason to extend a life already too long. The Commission itself realized this when its staff director told a House Judiciary Subcommittee last week that another 2-year extension without an increase in power would not be merited. The request for an increase in authority in itself constitutes an admission that the Commission needs new justification for its existence.

The Commission on Civil Rights was initially established in 1957 for a 2-year period for the purpose of preparing a report to Congress and the President. Six years have come and gone and this supposedly transitory body is still with us. Not only is it still with us but it is growing by leaps and bounds. Its staff, which initially consisted of 38 employees, now numbers 73. Its appropriations are now just under \$1 million.

Yet today the Commission has the unmitigated audacity to return with the request that it be allowed 4 more years to complete what we were assured would be done in 2. It is time we discontinued this ever-growing body before its continuing expansion overwhelms us all.

I spoke a moment ago about the fact that the request of the Commission for an increase in its authority constitutes an admission that it needs a new justification for its existence.

And what authority is requested? That it be allowed to act as a "national clearinghouse" for civil rights information and that it be allowed to furnish technical assistance to government agencies, industries, organizations, and individuals. However, both of these functions are presently being performed, rightfully or not, by the Department of Justice. The Department in justifying its appropriations for 1959 and 1962 made the following statements to the House Appropriations Committee:

The Department will take on a program of liaison and consultation with law-enforcement agencies and other officials of the States in order to promote understanding of the problems and to place the State and Federal responsibilities in their proper perspective.

We have in mind the great importance of the collection of far greater information—both factually, and legally, in the whole civil rights area.

In the field of civil rights the Department's basic policy is to seek effective guarantees and action from local officials and civil leaders, voluntarily and without court action where investigation has disclosed evidence of civil rights violations.

Therefore, according to the Justice Department, it has been performing the very functions for 3 years which the Commission now requests authority to perform. The Assistant Attorney General for the Civil Rights Division has for the past month been giving technical assistance in Alabama to "government agencies, organizations and individuals."

The Commission's staff director stated recently that there is a need "for an agency able to give the kind of advice and assistance which will contribute to peaceful and permanent solutions to racial problems." Again, I take it, that is what the Justice Department has been trying to do. In any event, in light of its controversial and divisive activities in the past, I hold out very little hope that the Commission can ever contribute to "peaceful and permanent solutions."

S. 1117 would also increase the rulemaking power and subpoena power of the Commission. S. 1219 has no such provision. If by any chance legislation extending the Commission is reported, I shall do my best to see that it includes a provision restricting rather than broadening its rules. Specifically, I am thinking of the Commission's rules providing that the names of complainants need not be revealed to witnesses summoned, and witnesses cannot cross-examine their accusers

or other witnesses called by the Commission. Even though the testimony and charges may produce a Federal criminal offense, there is no right of confrontation. To me this constitutes a clear denial of due process. However, these rules were upheld by the Supreme Court over the constitutional objections of two dissenters, by the unfortunate decision in *Hannah v. Laroche* (368 U.S. 420 (1960)). Therefore, it is up to Congress to see that the Commission observes constitutional guarantees in its future proceedings. However, it is most distressing to me that an agency, designated the Civil Rights Commission, is oblivious to our most basic rights.

S. 1219 would make the Commission a permanent agency; and thus the bill would adopt the pessimistic view that civil rights problems will be with us permanently. I personally continue to hope that through good will and intelligence racial problems will be solved on the local level where the individuals live; and this is the only place such problems can be effectively and truly solved. The liberties of a minority will not be made more secure by destroying the concept of orderly, constitutional government for all races and all generations.

Senator Keating, do you have a statement?

Senator KEATING. Yes, I have a short statement, Mr. Chairman.

Senator ERVIN. Proceed.

STATEMENT OF HON. KENNETH B. KEATING, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator KEATING. The Commission on Civil Rights, which was created under the provisions of the Civil Rights Act of 1957, has been confronted by one obstacle after another. Uncertainty and opportunities for harassment and obstruction arise during each of the periodic requests that its life be continued. Certainly, it seems to me, the time has come to relieve the Commission of the burden of periodic renewal and to allow it to plan its activities and operations without wondering if there is any point in looking beyond September. It is for that reason that Senator Saltonstall, joined by Senators Beall, Case, Cooper, Fong, Javits, Kuchel, Pearson, Scott, and myself introduced S. 1219.

When I consider the difficulties that have confronted every attempt to extend the life of the Commission on Civil Rights, I wonder what those who claim we have moved too far in the field of civil rights have in mind.

We created, many years ago, permanent agencies to prevent unfair trade practices and unfair labor practices. If any working man or woman has been discriminated against because of his union activities the full resources of the Federal Government are available for his protection. This is as it should be. If any consumer has been deceived by fraudulent advertising the Federal Government does not hesitate to appoint counsel, conduct a hearing, issue a cease-and-desist order and take the case all the way up to the Supreme Court, if necessary, and this is as it should be. But let someone suggest that there should be a permanent agency to study and recommend steps to protect the constitutional rights of Americans and howls of protest are heard. This is very definitely not as it should be.

The chairman of this subcommittee and I and others have joined in legislation to provide a public defender for the defense of alleged

criminals. Is there less justification for a public defender for Americans who are charged with no crime and who seek only to enjoy the rights and privileges promised them in the Constitution?

The truth is that in no area of major national concern has the Federal Government moved more hesitantly and more timidly than in the area of civil rights. Many of the same Congressmen who consider it their solemn duty to prop up the price of a bushel of corn, just don't see that the Federal Government has any business getting mixed up in the question of civil rights. And on another level of interest, many who speak with such eloquence about America's mission in the world, close their minds to the devastating impact of our racial troubles in the vast majority of places in the world where the white race is in the minority.

These contrasts have always bewildered me, but I have never been more bewildered than by some reports that prospects for extending the Commission's life have been dimmed by the recent events in Birmingham.

In my judgment, what has come to the surface in Birmingham makes indefinite extension of the life of the Commission imperative. We must demonstrate that the Federal Government has some awareness of its responsibilities to protect civil rights. Otherwise, impatience is bound to turn to outrage and demonstration could easily be transformed into riots.

For those who wanted to see, this Commission has for several years been spotlighting the conditions which have finally been given such prominence in places like Birmingham; Oxford, Miss., and Albany, Ga.

As a result of its reports no one can deny any longer that, in America, qualified citizens are denied that right to vote because of the color of their skin, that schoolchildren are excluded from certain public schools because of their race, that Negro Americans do not have equal employment opportunities and the same ability as whites to live and bring up their families in decent homes. As a result of its reports, we are compelled to admit that the Federal Government is a financial partner in practices designed to perpetuate segregation in hospitals, in public libraries, and even in the research programs of some of our universities. The Commission has laid bare the facts. Abolishing the Commission won't alter any of these facts, but giving the Commission an indefinite life may help us find the path of improvement.

A vote of confidence in the Commission will demonstrate that we are ready to face the facts, and hopefully, to do something about them. It will help demonstrate to our own citizens that they can look to their national representatives to assist them in their striving for first-class citizenship. And it can help demonstrate to the whole world that while America has its problems it also has the will and determination to cope with them.

While I endorse most of the recommendations of the Commission, agreement with the Commission's recommendations is no more necessary for its extensions than is agreement with the decisions of the National Labor Relations Board necessary to justify its indefinite continuance. Indeed, this is not even the appropriate occasion, it seems to me, for dealing in detail with the Commission's recommendations—although they certainly must be dealt with by this subcom-

mittee and the Congress, and the executive branch, for that matter—before much more precious time is lost.

Let us concentrate our attention now on just one issue—do we want to continue learning about the problems of civil rights facing our country and do the best we can to solve them? If we do, as I believe we must, let us act quickly on this matter and give the Commission an early green light for continued progress.

Thank you, Mr. Chairman.

Senator ERVIN. Senator Bayh?

Senator BAYH. I have a statement, Mr. Chairman.

Senator ERVIN. You may proceed.

STATEMENT OF HON. BIRCH BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator BAYH. Mr. Chairman, Senator Keating, and members of the committee, I would like to make a very brief statement.

Since its inception, following passage of the Civil Rights Act of 1957, the U.S. Commission on Civil Rights has compiled an impressive list of contributions to the cause of genuine and universal equality of rights and opportunities in America. The enjoyment of basic human rights by every American has been too long delayed. One cannot help but wonder whether every American might not now be exercising these rights in peace and freedom if the Commission had begun its record of achievement one or two decades ago.

Our Nation owes boundless gratitude to the distinguished citizens from every section of the country who have accepted appointments from Presidents Eisenhower and Kennedy to the Commission on Civil Rights. My own State of Indiana takes special pride in the service of the president of one of the great universities of our State and Nation—Father Theodore Hesburgh, of the University of Notre Dame. Under the inspiration of Father Hesburgh and his colleagues, the Commission has stimulated progress in civil rights along many fronts—in voting, housing, education, employment and in the administration of justice, to name but a few.

Today we begin consideration of the President's proposal for a third extension in the life of this agency. His proposal is reasonable and just. I support it, while sharing in his optimism that we may soon solve our problems in this most fundamental of concerns. But, I will continue to support this effort for as long as it takes to provide human rights to every American.

Unfortunately, we have not yet reached that millennium in the "equal protection of the laws" which would warrant dissolution of the Commission on Civil Rights. In the meantime, we must continue to avail ourselves of the fruits of its labors. And we must provide the staff of the Commission the incentives which will enable them to carry on with efforts which, all will admit, should not be necessary in America.

We, as Americans, cannot hide our shame that we have not yet accorded every citizen his moral and constitutional rights to the basic freedoms of our democracy. But we can take pride in the fact that the Commission on Civil Rights represents our determination to correct the injustices of the past.

This job will be done. It must be done. I say let us not hesitate to extend the life of the Commission for as long as is necessary, and I repeat for as long as is necessary, to help us get the job done. We must not fail in our duty at this critical point in American history.

Senator ERVIN. Senator Fong, do you have any statement you would like to make at this time?

Senator FONG. Yes, I do have a statement, Mr. Chairman.

Mr. Chairman, I would like to make a few remarks about both bills now pending before this subcommittee.

The Civil Rights Commission is an independent Federal agency scheduled to go out of business on November 30, 1963. Its life has been extended twice before—in 1959 and again in 1961. S. 1219 proposes to extend its life indefinitely. S. 1117 would provide a 4-year extension.

Since its establishment by the Civil Rights Act of 1957, the Commission has done a topnotch job with great distinction. By investigating the problem areas, and by issuing reports periodically, it has helped to create across the Nation a climate of understanding and moderation essential to progress in this field. The Commission has spotlighted to the public not only the great progress which has been made, but also the critical areas of civil rights which must yet be secured to all Americans.

Under the present law, the Commission has the power to investigate deprivations of the right to vote, denials of equal protection of the laws, in education, employment, housing, and in the administration of justice. These things the Commission has done, very effectively and diligently. It has issued reports and recommendations which have guided the Congress and the President in taking action to right the wrongs.

Both bills give the Commission the additional power to serve as a clearinghouse for civil rights data. The Commission may offer its advice and technical assistance to anyone or any group wanting expert guidance; the Commission may then help to work out practical solutions in creating an atmosphere of understanding indispensable to peaceful and orderly progress.

I am a cosponsor of both S. 1117 and S. 1219. I cosponsored both bills because I believe that the underlying spirit of both measures is the same. I prefer, however, S. 1219, which extends the life of the Commission indefinitely.

There are still many areas of unfinished business in civil rights, areas yet to be fully and adequately investigated. Because of this, both measures are meritorious.

As an investigating and factfinding agency, the Commission does a job that is not done by any other Federal agency. For example, it was the Commission's hearings on voting rights in 1958 that led to three things: the enactment of the Civil Rights Act of 1960 by Congress; a bill which I have cosponsored with Senators Cooper and Dodd to protect the right of every American to vote; and a number of voting lawsuits initiated by the Department of Justice.

The value of the Commission's work does not lie only in legislation and lawsuits. There is an absolute need for us to have a public agency continually throw the public spotlight on the unfinished job of insuring the civil rights of all Americans.

Even though the Commission is given an indefinite extension, Congress will not lose any control over it. The Commission will still be subject to a yearly review of its operations when it comes to Congress to ask for appropriations. And, of course, even under an indefinite extension, Congress could still stop the Commission's operations at any time.

The Federal Civil Rights Commission has repeatedly demonstrated its usefulness and effectiveness in diligently pursuing the areas of American life where there still exist practices inconsistent with the principles of democracy. It has established itself in our body politic as an expert agency, with the experience, capability, and competence to contribute significantly in securing our constitutional guarantees to all Americans, regardless of nationality, race, or religion.

The Commission deserves a new and broadened charter to continue its very commendable work.

Sen. ERVIN. Thank you, Senator. Senator Long.

Senator LONG. Mr. Chairman, I appreciate the opportunity to present a brief statement in support of S. 1117.

My comments will be short because the need for this legislation is urgent. The case has been clearly presented and the time has come for action. Across the Nation roll the voices of American citizens demanding that the yoke of discrimination be lifted from their shoulders. Born with freedom in their hearts, Negro Americans are pressing for the opportunity of full enjoyment of freedom.

For a century, we as a nation have closed our eyes to the denial of equality imposed upon the Negro. We have turned our heads evidently hoping the problems created by discrimination would evaporate or go away. Apparently, we have hoped that the Negro would be satisfied with the second-class role assigned to him.

True in 1957 and 1960, the Congress enacted civil rights legislation. Both acts dealt primarily with voting, but they have been ineffective even in this one area. It is still necessary to enact additional legislation to secure to the Negro this most basic right of democracy.

Anyone who honestly believes we can continue to avoid the issue of equality by the enactment of ineffective civil rights laws cannot be in touch with reality. When freedom burns bright in the hearts of men, only the physical force of tyranny can withhold freedom and even then not for long. If the Congress refuses to face the matter squarely and enact legislation which effectively implements the guarantees of our Constitution for all Americans, we are in for real trouble. We can no longer continue not to be true to ourselves.

The bill, S. 1117, is only a small beginning, but an essential part of the legislative steps that must be taken. The Civil Rights Commission has added immeasurably to our knowledge of where we stand and what legislation would lead to solving the problems of discrimination. The Commission during the last 6 years has looked at the situation and called the play exactly as it saw it. Each of its recommendations has been a substantial contribution to the process of determining the actions which should be taken. The Congress should not bog down on this proposal but should enact S. 1117 immediately so it can get to work on passing the other proposals which are necessary to end discrimination. If we cannot make freedom work in the United States

with our long tradition of liberty, there can be little hope for the rest of mankind.

Sen. ERVIN. Thank you, Senator. Will counsel please call the first witness.

Mr. CREECH. The first witness is Senator Philip Hart of Michigan.

**STATEMENT OF HON. PHILIP A. HART, A U.S. SENATOR FROM THE
STATE OF MICHIGAN**

Senator HART. Mr. Chairman and members of the committee, you have kindly permitted me to come and testify, and I welcome the opportunity.

It is no secret that I am here to speak in support of S. 1117, a bill that would extend the life of the Civil Rights Commission for 4 years, and to authorize additional duties for the Commission.

This bill is based on the recommendations contained in the President's message to the Congress on civil rights, and 30 of our colleagues joined me in introducing it.

This bill reflects the recommendations of the President. Others will speak here, I know, of the excellent job of investigating and reporting that the Commission has done under its original mandate since it was created, as the chairman of the subcommittee has described, in 1957.

There are many areas where the Commission has been at work and, as a result of that work, there is before the Congress a comprehensive civil rights program. The greater part of it has not yet been enacted, but it is no reflection on the excellent work of the Commission.

In his civil rights message, the President urged that the life of the Commission be extended for at least 4 more years.

Mr. Chairman, I think the point is that there are very practical administrative reasons why the life of the Commission should not be extended for less than this period. These reasons, I am sure, will be outlined in detail by the staff of the Commission as they make your record here.

There will also be witnesses before this committee who will speak on the important work the Commission could do under its proposed new mandate in acting as a clearinghouse for civil rights information, and in providing technical assistance to State and local governments, industry and unions.

As we watch the quickening pace of the efforts by American Negroes to achieve their full civil rights, one realizes that now, as never before, we need sound, good information and communication of that information. We need it desperately. We need it especially at the local levels where civil rights problems exist, and where ultimately they must be solved.

There are many lessons to be learned from Birmingham, but one of them certainly is what happens in a community when the lines of communication between the races fail, and what happens when a sizable portion of American citizens are frustrated to the breaking point in their effort to exercise the most basic rights of citizenship, the right to vote and to assemble.

Now, time ran out in Birmingham. It is clear that there is no moment when the Nation can again say, "Wait," to the American Negro in his efforts to achieve his rights.

Last Sunday the Washington Star quoted a Negro mother as she waited in the recorder's court in Birmingham for her son's case to be called. Her comment was:

Anything worth having is worth fighting for. If I had done this 10 years ago maybe he wouldn't have to do it today.

As we look back on the events of recent months, we might say to the Negro mother that had the expanded functions suggested today for the Commission been given to it 5 years ago, critical tensions there and elsewhere might have been avoided. Had we had the vision to create the Civil Rights Commission 16 years ago, the course of history might have been substantially altered.

Today I would like to direct my remarks to just one facet of the civil rights problem, and one which, I believe, illustrates the important role the Commission can play in the future with the additional powers suggested in S. 1117.

The subcommittee chairman has already commented, with his usual care and in language that reflects the depth of his convictions, about that section of the Commission's report dealing with the withholding of funds furnished Mississippi.

I think in many quarters that section of the report has been misinterpreted and, perhaps, distorted. I would like to quote just briefly one portion, one pertinent portion, of the report. It reads this way:

We urgently request that the Congress and the President consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State which continues to refuse to abide by the Constitution and laws of the United States.

No Member of Congress has been free from trouble and doubt, I am sure in the years that preceded 1963, as to the most responsible way of facing up to the problem that the Civil Rights Commission very dramatically described to us in its report on Mississippi.

As the subcommittee chairman said, education is an essential key to changing regional attitudes, eliminating prejudice.

The argument goes that if the funds are shut off by executive action or by legislative amendment to an education bill, which thereby fails of passage, in either event the schools will be either closed or operating at a lower level of excellence than otherwise would obtain and, therefore, don't shut off the money, therefore don't support what has come to be known as the Powell amendment.

The argument goes further: Is there any principle with such priority that you would deny an opportunity to raise the educational excellence for anybody in America?

What we have here, I am sure, is a number of principles that call for judgment and application.

Each of us in our own conscience has to determine which of these principles has highest priority, and in my book the proposition that you do not longer use the money that is contributed by every American to support institutions and programs the admission to which is denied some of those Americans is the principle of highest priority.

In any event, I was struck by the subcommittee chairman's comment that this would visit the sins of the fathers on the children. To be suggested equally is that the sins of the fathers already are visited upon the children so long as there is segregated schooling or any other discriminatory use of public facilities.

In any event, with respect to this recommendation of the Committee, the President, as evidenced by his Executive order establishing the President's Committee on Equal Employment Opportunity, his Executive order on discrimination in housing, continues to recognize the urgency of removing all discrimination from Federal programs.

The time is now when the greatest skill must be applied by both the Congress and the executive branch to insure our dual objectives, getting the educational levels raised, making broader the availability of hospital services, improving all of these services, and doing so in a nondiscriminatory manner.

This recommendation of the Commission, I think, is not really dramatic at all. It is just the expression of a common sense concern.

For a number of years we in the Congress have taken a piecemeal approach to the problem, and to make a considerable understatement, it has not been noticeably successful.

Now, the Commission, to its credit, as Senator Bayh has said, has placed the problem right in front of us. Shall the Federal Government through grants and loans of its funds continue to support patterns of racial discrimination throughout this country?

As I have indicated, in my book, the answer is clear, and we again, as Senator Bayh has underscored, owe a debt of gratitude to the Commission for putting the issue before us in unmistakable terms.

As the subcommittee chairman indicated, it is my understanding that the Commission now has underway several investigations bearing on this question, and the reports are scheduled to be issued later this year. There will be a report on minority access to federally assisted training programs under the National Defense Education Act, the Manpower Development and Training Act, and the Area Redevelopment Act. The report on equal opportunity in the Armed Forces, the third report, will focus on the access of minority groups to facilities and medical care provided by the Hill-Burton Act and program. These findings, I think, would be invaluable.

Recently, I have written to a number of the heads of executive departments and agencies inquiring as to whether or not they consider they now have sufficient authority to withhold Federal funds from grant, loan, and contract programs which they administer if it was found that such programs are operated or applied in a discriminatory manner.

If it is thought that such authority does not now exist, then Congress clearly will have the responsibility, as I see it, to provide the authority.

Of course, there are many Federal agencies and programs which now have a nondiscriminatory policy. This is the beginning, not the end. Here the problem lies in the difficulties encountered in implementing the policy, applying it.

Under its present grant of authority, the Civil Rights Commission has only very limited means of providing assistance to Federal agencies on the administration and staffing of civil rights programs.

Under the new authority provided in S. 1117, the Commission would be authorized, as a major responsibility, to consult with and make recommendations to Federal agencies regarding the means for implementing nondiscrimination policies, including techniques of administration, enforcement, review and evaluation, and the orientation and training of existing personnel of the agencies to administer the policy.

It seems to me that our objective in authorizing these new functions should be affirmatively to provide the skills and adjustments that will obviate the possibility that any Federal funds will have to be suspended because of the violation of constitutional guarantees.

As the subcommittee chairman rightly describes it, he says that is punitive. He said that punitive action is certainly the least desirable course for the Congress, the executive branch to have to follow. It is far better if we provide tools and programs by means of which this can be avoided.

Mr. Chairman, I would ask leave to submit, when I complete it, for the record, a memorandum on extension of the U.S. Commission on Civil Rights, and this, I would attempt to provide as a review of the present functions and operations of the commission, and make suggestions as to how the expanded authority recommended in the President's message might be put into operation, and the justification for an extension of its life.

I would also, in closing, Mr. Chairman, be remiss if I did not indicate the sincere view held by many of the sponsors of S. 1117, which has bipartisan sponsorship and, as I say, numbers 30 of us. This bill is only one part of a long overdue legislative program. Many of us are sponsors of legislative proposals to strengthen and extend existing programs and policies in the field of voting, employment, education, and to grant to the Attorney General broad authority to seek relief on behalf of citizens whose basic civil rights are violated.

To the extent that these bills are before this subcommittee, we will respectfully suggest that the subcommittee, after considering the Civil Rights Commission bills, move on to these other areas during the present session of the Congress.

MEMORANDUM BY SENATOR PHILIP A. HART ON EXTENSION OF THE U.S. COMMISSION ON CIVIL RIGHTS

In his civil rights message of February 28, 1963, President Kennedy asked that the U.S. Commission on Civil Rights be extended for a period of 4 years. He also proposed that its duties be expanded so that it could serve as a clearinghouse for civil rights information and provide technical assistance to Government agencies, communities, industries, organizations and individuals in respect to equal protection of the laws. The administration's proposal in the Senate is S. 1117 and it was introduced in the House as H.R. 5456.

Following is background information concerning the proposed legislation:

I. PRESENT FUNCTIONS OF THE COMMISSION

The Civil Rights Act of 1957 established the Commission on Civil Rights as a bipartisan agency to investigate civil rights problems and report to the President and Congress with recommendations for corrective action.

Specifically the Commission is directly by law to—

Investigate formal allegations that citizens are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin;

Study and collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution;

Prepare and submit interim reports to the President and Congress and a final and comprehensive report of its activities at the time of its scheduled expiration.

Originally the Commission was established for a 2-year period and received successive 2-year extensions in 1959 and 1961. The present expiration date is November 30, 1963.

The six Commissioners presently serving by appointment of the President, with the advice and consent of the Senate, are:

Dr. John A. Hannah, Chairman, president, Michigan State University.

Robert G. Storey, Vice Chairman, president, Southwestern Legal Foundation.

Erwin N. Griswold, dean, Harvard University Law School.

Rev. Theodore M. Hesburgh, C.S.C., president, Notre Dame University.

Robert S. Rankin, Department of Political Science, Duke University.

Spottswood W. Robinson III, dean, Howard University Law School.

The day-to-day operations of the Commission are under the direction of the staff director, Berl I. Bernhard, also a Presidential appointee. The staff consists of 72 employees. For fiscal year 1963 the Commission has received an appropriation of \$950,000.

The Commission was given the power to hold hearings, and to compel the production of documents and the attendance of witnesses, in order to assist it in its factfinding functions. Major voting hearings were held in Alabama in 1958 and in New Orleans in 1961. Hearings on the status of equal protection of the laws have also been held in all areas of the country including New York, Chicago, Cleveland, Detroit, Atlanta, San Francisco, Los Angeles, Phoenix, Memphis, Newark, and Indianapolis.

The State advisory committees authorized by law consist of 487 citizens of standing in each of the 50 States and the District of Columbia. These committees gather information through surveys, public meetings, and conferences with Government officials and their reports to the Commission form a part of the basis for the Commission's reports.

Annual conferences of educators have been held by the Commission since 1959 to collect information concerning the problems of transition from segregated to desegregated public school systems. It has also held periodic conferences of housing experts to gather data concerning equal protection in this area.

Commission reports

In 1959 the Commission issued a final report containing findings, conclusions, and recommendations in the fields of voting, housing, and education.

In 1961 the Commission published an interim report on problems of equal protection in higher education.

The 1961 final report included reports on recent developments in voting, housing, and education, concentrating particularly on areas not previously studied (e.g., the role of federally regulated and assisted financial institutions in housing discrimination). It also included reports on the administration of justice (the effectiveness of Federal laws protecting against private violence, police brutality, and racial exclusion from juries), employment (the role of the Federal Government in providing equal opportunity in government employment and in jobs created by Federal contracts and assistance), and a preliminary study of the civil rights problems of Indians.

The Commission has issued a number of interim reports since its extension in 1961 such as that concerning housing discrimination in the District of Columbia. A report on civil rights progress during the past 100 years, undertaken at the request of the President in connection with the centennial of the issuance of the Emancipation Proclamation, was also made. There have been reports on the status of school desegregation in four southern communities and in four communities in the North and West, a report on the status of equal protection in Mississippi, and several special reports of the State advisory committees.

Results of the Commission's investigations and reports

Many of the recommendations made by the Commission in its reports have been acted upon by the President, the executive agencies, and Congress.

The President's Executive order requiring equal opportunity in federally assisted housing was based upon recommendations made by the Commission in its 1959 and 1961 reports. The Commission's 1959 proposals on voting formed the basis and provided much of the impetus for the Civil Rights Act of 1960.

The detailed information about Negro registration and denials of the right to vote developed at the Montgomery and New Orleans hearings and through other investigations has furnished the Department of Justice with a basis for independent investigation which has resulted in the initiation of a number of successful suits under the Civil Rights Act of 1957.

The Commission also receives complaints concerning the denials of rights for reasons of race and, where appropriate, brings them to the attention of Federal agencies which have remedial powers. In a number of cases pension rights

and benefits have been restored to Negro citizens after complaints were brought to the attention of the appropriate Federal agencies and investigated.

II. REASONS FOR THE CLEARINGHOUSE AND TECHNICAL ASSISTANCE FUNCTIONS

In his civil rights message to Congress, the President, after summarizing the Commission's past performance and present functions, said:

"There are, of course, many areas of denials of rights yet to be fully investigated. But the Commission is now in a position to provide even more useful service to the Nation."

The President's message went on to describe the functions which the Commission could perform:

"As more communities evidence a willingness to face frankly their problems of racial discrimination, there is an increasing need for expert guidance and assistance in devising workable programs for civil rights progress. Agencies of State and local government, industry, labor, and community organizations, when faced with problems of segregation and racial tensions, all can benefit from information about how these problems have been solved in the past. The opportunity to seek an experienced and sympathetic forum on a voluntary basis can often open channels of communication between contending parties and help bring about conditions necessary for orderly progress. And the use of public hearings—to contribute to public knowledge of the requirements of the Constitution and national policy—can create in these communities the atmosphere of understanding which is indispensable to peaceful and permanent solutions to racial problems."

At present the Commission provides information and assistance to government agencies, individuals and organizations on a very limited scale. But these efforts are subordinated to the reporting and factfinding function of the Commission which is mandated by law. At present, the Commission has only one full-time information officer, only two staff members, who devote a large portion of their time to the needs of Federal agencies, and a research staff which can devote only a small portion of its time to requests for information and assistance.

Based upon current and recent requests for information and assistance, passage of the proposed legislation might result in the following Commission activities:

Clearinghouse.—(a) The development of general educational material for use by students, civic organizations, and others who have basic questions about the Constitution, laws, and policies of the United States with respect to civil rights; (b) the development of material for Government agencies, organizations, and individuals who have specific civil rights responsibilities; (c) the development of material needed to answer specific requests for information, e.g., a school board's request for information about the details of desegregation plans adopted by other jurisdictions and an assessment of how they worked out in practice; and (d) the development of an adequate library containing books, periodicals, audiovisual materials and guides to finding additional materials on civil rights problems.

Technical assistance.—(a) Consultative services and assistance to State and local governments, e.g., assistance to a Governor's staff in preparing a State fair practices code, consultation with a local school board on desegregation plans, school assignment procedures; (b) consultative services and assistance to industry and unions, e.g., assistance to employers in developing merit hiring and training programs, assistance to a union in desegregating apprenticeship training programs; (c) assistance to Federal agencies, e.g., assistance in evaluation of policies where the Commission has made studies and recommendations regarding the means for implementing new policy including techniques of administration, enforcement, review and evaluation, and the orientation and training of existing personnel of the agencies to administer the new policy; and (d) conferences, e.g., a meeting on equal access to public accommodations including representatives of business and civil rights organizations and Government agencies to exchange information and views on dealing with problems of discrimination and protest.

III. REASONS FOR A 4-YEAR EXTENSION

President Kennedy said in his civil rights message:

"If, however, the Commission is to perform these additional services effectively, changes in its authorizing statute are necessary and it should be placed on a more stable and more permanent basis."

Therefore, he requested an extension of the Commission's life for at least 4 more years.

It is clear that the Commission will have an important function to perform over the next 4 years. The Commission has been an efficient, low-budget operation. It could be even more efficient and effective if extended for this longer term. And Congress would not lose control over the Commission since it would be before the Congress each year seeking appropriations.

Having demonstrated its utility and effectiveness, the Commission should be extended for at least 4 years subject, of course, to a continuing review of its activities by Congress and the President.

Again, Mr. Chairman, thank you for your courtesy in hearing me.

Senator ERVIN. I do not have before me a copy of the recommendation of the Civil Rights Commission to cut off funds to Mississippi. However, my recollection is that the Civil Rights Commission justifies its recommendation on the ground that such grants subsidize the subversion of the Constitution by Mississippi officials. Is my recollection correct on that?

Senator HART. There was a comment at the conclusion that this was subsidizing discrimination, yes.

Senator ERVIN. I would like to state that I cannot agree with the Commission's recommendation, and I cannot agree with my good friend, the senior Senator from Michigan. I am totally incapable of comprehending how it can be said that you subvert the Constitution by using Federal funds in Mississippi to control tuberculosis, to furnish Braille books for the blind to read; by providing funds for the control, as far as possible, of venereal diseases; funds for cancer research, funds used to abate the pollution of water within the borders of the State of Mississippi, and funds for the education of children in impacted Federal areas. I cannot see how it can be said that to spend money in Mississippi for these important projects constitutes a subversion of the Constitution. The Federal funds are used for the education of the mentally retarded, for vocational education, and for branch libraries in order that the people in Mississippi might be allowed to read and expand their intellectual horizons.

If Federal funds were cut off, it would deny old-age assistance to all of the people in Mississippi who need it to keep a roof over their heads, food in their stomachs, clothing on their backs, and medicine for their ills. Furthermore, among these people in Mississippi, there are 70,440 Negroes who would be denied the benefit of old-age assistance as distinguished from 44,935 white. After deploring the fact that the officials of Mississippi were cutting off food for children, the Commission proceeded to say, that the Federal Government should cut off all assistance used to subsidize aid to dependent children, who have nothing whatever to do with the policies of the State of Mississippi. I note that 77.7 percent of these children are in homes of Negroes.

As a matter of fact, this recommendation of the Commission, if the President had undertaken to implement it, would have cut off aid to 50,770 Negro children in Mississippi as against 11,842 white children.

Approximately, 79 percent of all of the funds that go to the State of Mississippi for the aid to dependent children go to Negro children. I do not understand how cutting off all of these funds from Mississippi for the control of venereal disease and cancer and water pollution and aid to dependent children has any relation whatsoever to the subversion of the Constitution by the officials of Mississippi.

Senator HART. Mr. Chairman, do you feel that if the braille book was in a library to which only Negroes were admitted that there would be or would not be a violation of the Constitution?

Senator ERVIN. Well, I do not know whether that is a fact. I am not familiar with the conditions.

Senator HART. I do not know whether that is a fact either. But, I say, if it were a fact what would your attitude be?

Senator ERVIN. But I do know that included in these funds which would be cut off would be a considerable amount of money for aid to the blind given to all Mississippians, white, colored and Indian; and that is not disseminated in a public library.

Senator HART. Mr. Chairman, the point I am trying to make by that question or to suggest is that I think this Congress and the Executive, have an obligation to review each Federal program to see that it is applied on a nondiscriminatory basis.

As I recall it, the suggestion made by the Commission was very broad in its definition of moneys that might or might not be withheld.

I think that our obligation and the Executive's obligation is to see to the nondiscriminatory application of each particular program. I think we will agree that the rights under the 14th amendment, limiting State action, correlated to the fifth amendment, as it relates to the obligation of a Federal official under the 14th, makes it illegal to support discrimination. I think it is the right—there are those who would say it is the duty—for the President to withhold the moneys in Washington to support that effort. He takes an oath to support and protect the Constitution and to enforce the law.

Now, analyze each Federal program, program by program, to see whether the braille book is in a building to which admission is segregated. If so, I think we have the answer as to what we should do.

Parenthetically, the people of Michigan have had in very recent date some experience in this area. Several years ago we extended the aid to dependent children program to the children of the unemployed worker.

The State of Michigan in this session of the legislature adopted conforming legislation so as to be eligible for participation in that program. They defined, however, "unemployed" as a former wage earner who had been covered by the unemployment insurance program. The Secretary of Health, Education, and Welfare ruled that this was discriminatory and has withheld the funds. Discriminatory because children of a parent who had not worked under covered employment would not be eligible. This having the effect of denying moneys to some 10,000 families.

As you point out, what advancements do you make? I have the impression that the Secretary of Health, Education, and Welfare was right in this, in that it had the effect of encouraging Michigan to enact a program which is nondiscriminatory in all of its aspects. I think that we are wrong when he sends to Mississippi moneys for programs which are segregated or discriminatory, not because of economic classification, but because of racial classification. I think the power is there and I think the obligation is clear.

I do not quarrel with my colleague who has a reluctance to support what we have come to know as the Powell amendment. I can see the complications, we all can.

But, look, it is intolerable that we continue to vacillate in the middle ground. Use Executive action, program by program if you do not want to see the Powell amendment applied because the day is not yet at hand, I suspect, when we will be able to get an across-the-board statute making applicable this restriction to all programs.

But I have never found the answer to the Negro who says, "You collect taxes from me and then you permit them to be distributed in a fashion and into programs where I find the door slammed in my face."

Now, in my book, that is just intolerable and indefensible.

Senator ERVIN. I doubt whether that condition exists to a large degree in Mississippi, because the bulk of all the relief funds go to Negroes.

But suppose Congress should enact a law, to allow the President to cut off funds to a State he selects. Do you think that the State ought to be given notice, an opportunity to be heard, and have a day in court on the question whether it is violating the Constitution, or do you think it should be condemned, as the Civil Rights Commission recommended, without any notice, without any trial, without any opportunity to be heard and without any opportunity to refute the charges against it? Certainly that would be contrary to the basic concept of due process of law.

Senator HART. I think that the action would not be precipitate, and ought not be precipitate, but the notice should be very clear that the whistle has been blown.

Senator ERVIN. The fundamental difference in your view and mine is, I think, that in my view, the Federal courts in Mississippi are open. There are Federal laws which make it both a civil wrong and a crime to deny any person any right he has under the Constitution or laws of the United States.

My opinion is that the Federal Government should use the Federal courts in Mississippi if it has any evidence of violation of laws on the part of anyone, officials or private citizens, and prosecute them in a case, where due process is had, where they are given an opportunity to defend themselves.

I think that would be far better than taking aid away from the blind, taking aid away from people who are suffering from venereal disease and cancer, and allowing the rivers of Mississippi to be polluted.

Senator HART. Senator, that is the reason some of us would like to see what has been known as title III enacted to permit exactly that course of conduct by the Attorney General.

Senator ERVIN. And the reason some of us object to title III is that it changes the whole legal system of the United States by converting this from a government of laws into a government of men.

I thank the Senator. I have a high respect for the Senator and his opinions. But I think in this particular case the Senator is in a position where, unfortunately, he does not entertain the same sound views I do. [Laughter.]

Senator KEATING. Mr. Chairman, I do not want to prolong this. I know other commitments that Senator Hart has are calling him away, but I do want to make this comment at this point.

I have the feeling, as apparently Senator Hart does, that the statement in the report of the Civil Rights Commission has been widely

misunderstood and misinterpreted, and that goes for a number of editorial writers also.

The statement was:

That the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi until the State of Mississippi demonstrates its compliance with the Constitution and the laws of the United States.

Now, I interpreted that when I read that as meaning that that would take place with regard to each program separately, that it was not intended to say that the President should shut off funds to the State of Mississippi just because of segregation in a library or just because of segregation in a hospital; that it was understood that the President should survey his authority to shut off funds in any particular program where discrimination was practiced, and certainly I think that is sound. I think it is a proper procedure for making certain that the Constitution is enforced.

There is a responsibility here on the Executive to determine whether such a power does exist, and if that power exists to exercise it.

In turn, we should allow, of course, any State or community which feels that that is an improper exercise of power to review the matter in the court. There is no reason why the Federal court, the Federal Government, should go into court and say, "We propose to act in accordance with what we believe is right and legal, and we want the permission of the court to do so."

The action should be taken, and then allow any party who claims to be aggrieved thereby to bring its appropriate action in court.

Now, there is a correlative obligation on the part of the legislative branch to plug those loopholes where the Executive concludes that he does not have the power to shut off funds to a State which, in a particular area, is engaging in discriminatory practices.

I am constrained to say that I agree entirely with the Senator from Michigan in his comments, and I share his view that there has been a wide misinterpretation of this statement of the Commission.

Senator ERVIN. May I pay the Senator a compliment?

Senator KEATING. I am a little hesitant, but you go ahead. [Laughter.]

Senator ERVIN. I would suggest that if the Civil Rights Commission should have its life extended, they call on the Senator from New York to phrase their next pronouncement of this kind, because the Senator has made it appear quite different from what the language, as I interpret it was. We have apparently read the same document and drawn quite different conclusions from it, and I think it would have been a far more intelligent statement if the Senator from New York had phrased it, than it is as it was phrased by the Civil Rights Commission.

Senator KEATING. Well, after all, the Senator from New York has never been the dean of Harvard Law School or the dean of Howard University Law School, and he has never been president of Notre Dame.

We had some rather distinguished lawyers and legal scholars, serving on the Commission—and I do not eliminate the other three by referring to those three, who drew up this report.

While I appreciate the compliment, and it is a very high one, I feel that these gentlemen are extremely able lawyers.

Senator HART. Mr. Chairman, if I could just add a very brief note, so far as this Congress is concerned, and the Senate, particularly, let us not get lost over an analysis of the clarity of expression of the Commission.

The basic point they expressed concern about is one which we have to resolve, and let us not get off on a merry-go-round about how much more clearly it could have been put.

Senator ERVIN. Thank you, Senator.

Counsel will call the next witness.

Mr. CREECH. The next witness is Senator Jacob K. Javits, Republican, of New York.

STATEMENT OF HON. JACOB K. JAVITS, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, I want to thank the Chair and my colleagues of the subcommittee for the opportunity to appear before them. I shall make a brief statement and try to answer any questions.

Mr. Chairman, I greatly favor S. 1219, to make the U.S. Civil Rights Commission a permanent body.

The racial strife in Birmingham, Ala., which is so much in the news at the moment, is itself the most eloquent testimony which this subcommittee could possibly take on the bills presently before it. The Commission stands as almost the only outlet for the pent-up grievances of the Negro community which are bursting out more and more frequently.

The Birmingham case illustrates all too vividly how unwilling, and justifiably unwilling, is the Negro community of our Nation to endure any longer the denial of their constitutional rights and therefore second-class citizenship. And Birmingham also shows how inadequate are the laws of the United States to assure the legal and orderly expression of this deep and growing feeling of the Negro community.

When voting rights are involved, the Attorney General has limited power to resort to the U.S. district courts for injunctive relief, under the provision of the 1960 Civil Rights Act. But, as Albany, Ga., and Birmingham typify, the civil rights movement is changing toward a massive revolt of the Negro community against the entire segregated social fabric of the South. So far this has taken the form largely of peaceful protest, exercising the right of peaceful assembly and petition under the first amendment to the U.S. Constitution. But will it remain generally peaceful?

At this point, the Federal authorities have taken the position that no authority exists to take action in such situations short of a complete breakdown of law and order which the States themselves cannot handle; in that case the Federal presence—as through U.S. marshals, as at Oxford, Miss.—and, if need be, Federal troops can be used. Clearly there is an enormous gap between informal mediation, which the Department of Justice has attempted in Birmingham, through Assistant Attorney General Burke Marshall and others, and the use of troops.

At the present time, only the U.S. Civil Rights Commission exists in this gap. Its most vital function, in my view, is its availability as an official agency of the U.S. Government to receive and collate complaints of deprivations of civil rights, to make findings of fact

and to make recommendations to the entire Federal Establishment as to what should be done to rectify them. It is impossible to overemphasize the importance of this function of providing official recognition of the racial injustice which still exists in our land. It is of far more than symbolic value to the Negro community; it is also a vital expression to the rest of the world, especially the emerging nations of Africa, Asia, and the Middle East, of the moral commitment of the United States to the values expressed in our Constitution; and it is also an important guide against which the activities of all levels of government can be checked.

The Commission's expert recommendations to the President and to the Congress for executive and legislative action, respectively, are landmarks in U.S. governmental history. The 27 legislative recommendations of the Commission in its comprehensive 1961 reports on voting, education, employment, housing, and the administration of justice have been embodied in bills which I have sponsored and cosponsored with a number of my colleagues. Some of those bills are pending before this subcommittee and I strongly urge the subcommittee to hold hearings and act on them at the earliest opportunity.

In view of the inadequacy of civil rights law today, the U.S. Civil Rights Commission fills the vacuum which otherwise could be filled by even more incidents of violence stemming from despair. It does so precisely because it affords an opportunity for the airing of grievances and their objective appraisal. Faced as we are with the mounting crisis in civil rights, it is unwise to place a term limitation upon the extension of the life of the Commission if this can be avoided. For, where so much needs to be done in a particular field and where the public interest so urgently requires that it be done peaceably, it would be far better to create an atmosphere of permanence until the grievances may be fully dealt with. Otherwise, with periodic extension, the Commission is living on borrowed time, always with the prospect of extinction facing it and uncertainty facing its personnel.

Control by the Congress over the agency would, as always, be provided by the possibility of legislation terminating the Commission's life and, short of this, by the annual review of the agency's work and finances by the Appropriations Committees of both Houses.

The increase in the authority of the Commission, which is sought in both bills before the committee, is also fully justified, especially since there is so much agreement on the part of proponents and opponents of civil rights legislation that the processes of mediation and conciliation and technical assistance are peculiarly applicable in this field.

It is certainly desirable that the Commission have the opportunity to function as a national clearinghouse and to provide advice and technical assistance regarding the matters with which it is charged in the fields of equal opportunity. Indeed, it seems to me that opponents and proponents could both agree at least upon this forum and escape valve for the tremendous pressures which are facing our Nation with such dangerous and challenging implications.

Mr. Chairman, I conclude as follows:

One of the most disastrous effects of the events which culminated in Birmingham is in the impact which they have made upon the largely uncommitted nations in Africa, Asia, and the Middle East,

where live hundreds of millions of people whose skins are yellow, brown, or black. Not only has Communist propaganda exploited to the full the events in Birmingham—the arrests of children seeking only to invoke their constitutional rights of assembly and petition—but moderate, even conservative opinion, has been equally condemnatory. Therefore, how critically important it is—and how typically American—to afford the open forum which the Commission with its enhanced powers would provide. This can go a long way toward buttressing the point of view most helpful to us abroad—that we are aware that discrimination and segregation on racial grounds are major social problems in the United States, but that we are seriously and actively engaged in trying to deal with them.

On grounds of policy, as well as on grounds of practicality, I find it difficult to see how the extension of the life of the U.S. Civil Rights Commission can be opposed even by those who are against legislation in this field. If enacted, such legislation can make a major contribution to relieving those grave pressures which arise from the feeling that there is no adequate legal forum to air grievances of discrimination and segregation.

Mr. Chairman, I conclude by stating my deep and honest conviction that both proponents and opponents of civil rights legislation should support this one agency as an open forum in which there is at least an opportunity to debate, to receive evidence, to relieve pressures, to get expert technical opinions, to have recommendations to the President. Even if the Senator from North Carolina, my distinguished and very learned colleague, does not agree with such recommendations, they are nonetheless made by representative and distinguished people, and have an objective quality which, I think, can come best from them, in the national interest.

What this situation needs more than anything else is an effort at tranquillity, and this is, at least, one orderly process which is conducive to tranquillity. I hope very much that the subcommittee and the committee and the Senate will see it that way.

I think that this problem is so deep that it is not going to be exercised in the next 2 or 4 years. I think major progress may be made if we act as we should; but it may not, and I think that this mechanism, this Commission mechanism, has demonstrated its effectiveness in the field to such an extent that it ought to be continued as a permanent agency.

Thank you.

Senator ERVIN. I do not care to delay the Senator; I know he has other engagements. But I have difficulty seeing an open forum in the case of a Civil Rights Commission which conducts its investigations under a procedure concealing from those who are charged with wrongdoing not only the names but also the charges against them.

It denies the right to confront the parties who make the accusations, and it denies the right to cross-examine witnesses; and that is a wholly un-American procedure, in my judgment.

Senator JAVRS. Well, if I may comment on that to the Chair, if the Commission were engaged in proceedings based upon complaint in which it could give remedies, then there is no question about the fact that it would proceed precisely as the Senator has outlined. I would join with the Senator gladly in legislation applying every requirement of due process to the Commission, if we could convert

it into a fair employment practices commission or a commission with similar powers.

But this Commission has no such authority. It is not an adjudicative body. It is not trying cases. It is only finding facts and seeking to arrive at recommendations which are themselves then submitted in the public forum, where all objections can be made to them as the Chairman has indicated he wishes to make.

I know of no time that the Commission has denied any reasonable witness the opportunity to appear and testify, so that every point of view can be expressed.

Therefore, I deeply feel that for a Commission of this nature to perform its mission effectively and fairly, the point made by my colleague is not applicable. It could not be applicable without destroying its work.

I would gladly join with my colleague and others similarly situated to have this Commission proceed entirely in accordance with the procedures of the Administrative Procedure Act or any other applicable statute if we could at the same time give the Commission some teeth.

Senator ERVIN. I won't join my colleague in that because I believe in allowing all matters of this kind to be adjudicated in the courts.

Do you have any questions?

Senator KEATING. No. I just want to compliment my colleague from New York on a very fine statement.

Senator JAVITS. May I say to my colleague who sits on the subcommittee, no one could be more pleased than I by the fact that he is now the ranking member of this subcommittee, and I think it is a most auspicious fact that this is so. I think it will prove to be that whatever may happen to this bill, it will prove to be very helpful in the total course of civil rights legislation.

Senator KEATING. I hope that is so. But I am modest about my ability to accomplish things in the Judiciary Committee nevertheless.

Senator JAVITS. The Senator will get lots of help.

Senator KEATING. Unfortunately, it has not been the history of the Judiciary Committee to report favorably very extensive legislation in the field of civil rights, but I always entertain hope.

Senator JAVITS. The Senator will get lots of help in the committee and on the Senate floor.

Senator ERVIN. I would like to interject at this point that despite the fact that our colleague, Senator Keating, does not entertain the same sound views I do in the area we are now discussing, he has been a most industrious member of this subcommittee, and has rendered exceedingly valuable services to the subcommittee and to the country.

Senator KEATING. Well, I certainly appreciate that, Mr. Chairman. I have said many times—and these hearings called with promptness are indicative of it, that the distinguished Senator from North Carolina, although he does entertain views quite different from mine, has always been fair in his hearings and has demonstrated his willingness to have all sides heard and some resolution arrived at in this matter.

We are planning next month to have further hearings with regard to other bills which have been introduced, and I commend the chairman of this subcommittee for his actions in that regard.

Senator ERVIN. Senator Fong, do you have any questions or observation you would like to make at this point?

Senator FONG. Mr. Chairman, I have no questions. But I would like to commend the distinguished Senator from New York, who is very clear, on his precise statement on this subject.

Senator ERVIN. Senator Bayh.

Senator BAYH. Mr. Chairman, I would like to make one observation. I was particularly engrossed in some reading of the discussion of the right of confrontation on cross-examination, where the proponents and the opponents of the extension of the Commission have discussed this matter, and I think that, not to become embroiled in an argument with the distinguished chairman of the subcommittee, but because he did mention that this was contrary to American jurisprudence, it might be helpful in the record, the appendix to the opinion of *Hannah v. Laroche*, in which the Supreme Court of the United States lists several other administrative agencies that have been functioning in the due process or legal process of this country for some time, not to say the least of which are the Federal Trade Commission and the Federal Communications Commission, in which equal powers or lack of powers of confrontation and cross-examination are permitted.

As the distinguished Senator from New York mentioned, the determining factor seems to be, seems to be, I repeat, the limit or the scope of the power of the administrative agency involved.

Unless the chairman of the subcommittee has objection, unless this is contrary to procedure, it would be beneficial to include the appendix of the opinion of the Supreme Court in the record which, in some detail, outlines the extent of the agencies' subpoena power, investigative procedure, the type of notice required to be given, and investigative procedure, the right, if any, of the persons affected by an investigation to cross-examination of others testifying, and also miscellaneous comments which I think would give us a broader scope of what other agencies are doing in this important area of protecting the rights of individuals brought before administrative agencies.

Senator ERVIN. The appendix in *Hannah v. Laroche* will be placed in the appendix of the record. The *Laroche* case is a very interesting case to me. While the Court does not so declare expressly, the majority of the Court, with Douglas and Black dissenting holds, that the Congress of the United States conferred upon the Civil Rights Commission more drastic investigatory power than Congress itself was held to have under the Constitution in the *Watkins* case.

Senator JAVRS. Well, I know the Senator has his differences with the Supreme Court on occasion, and even the judges themselves have their differences among themselves.

But I think that the decision is the right one, and Senator Bayh has correctly expressed certainly my views.

Mr. Chairman, before I leave the witness stand, I would like to associate myself with the views expressed by Senator Hart and Senator Keating on what is claimed to be the lack of wisdom of the Commission or, perhaps, even a dereliction, in the recommendation to the President to explore his legal authority as Chief Executive to withhold Federal funds from the State of Mississippi until it demonstrates its compliance with the Constitution and laws of the United States, and I emphasize the word "explore."

I think the Commission was calling to the attention of the President his manifest duty as Chief Executive to see that the laws of the United States are faithfully applied and carried out.

I do not see, therefore, that it represents any arbitrary allocation of power to himself, or is any different from withholding funds for aircraft for defense or from a highway program where corruption has been charged—two established precedents in which the Executive power has been so exercised.

It is almost unthinkable that the President of the United States would devote Federal funds collected from all citizens to the practices which have been described by the Commission itself in the preamble to its interim report. The Commission says that even children at the brink of starvation have been deprived of assistance by the callous and discriminatory acts of Mississippi officials administering Federal funds. I do not see how our Nation can face with equanimity the allocation of Federal funds utilized in that way, and pretend that we excuse it on the ground that the Chief Executive does not have the power to withhold funds where he finds the Constitution is being overtly violated.

Senator ERVIN. If the Senator will pardon me, it is my construction that, immediately after shedding tears about the conduct of the officials of Mississippi in respect to children, the Civil Rights Commission proceeded to recommend that they not only cut off all aid to dependent children, but also cut it off completely from the old folks; and they are even deploring the fact that the National Aeronautics and Space Agency is planning to build a moon rocket test center in Mississippi. They do not even want anybody to ask an astronaut to fly to the moon from Mississippi.

Senator JAVITS. Well, Senator, I do not think that the Commission recommended that the President cut off anything or cut off anybody. I think they said the President has to search his powers and his conscience, and that the United States, therefore, as represented by the President, should do that, and with that I thoroughly agree.

I think it is his bounden duty.

Senator ERVIN. If there is no objection from any member of the committee, I would like to have placed in the record at this point a copy of the interim report of the Commission on Civil Rights so that everybody can interpret it according to his own views.

Senator JAVITS. Thank you, Mr. Chairman.

(The report referred to follows:)

INTERIM REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS

Pursuant to its statutory duty to submit reports to the President and to Congress at such times as either the Commission or the President shall deem desirable, the U.S. Commission on Civil Rights submits the following special report with respect to the status of equal protection of the laws in the State of Mississippi:

Since October 1962, the open and flagrant violation of constitutional guarantees in Mississippi has precipitated serious conflict which, on several occasions, has reached the point of crisis. The U.S. Commission on Civil Rights has become increasingly alarmed at this defiance of the Constitution. Each week brings fresh evidence of the danger of a complete breakdown of law and order.

Citizens of the United States have been shot, set upon by vicious dogs, beaten, and otherwise terrorized because they sought to vote. Since October, students have been fired upon, ministers have been assaulted and the home of the Vice Chairman of the State Advisory Committee to this Commission has been bombed.

Another member and his wife were jailed on trumped up charges after their home had been defiled. Even children, at the brink of starvation, have been deprived of assistance by the callous and discriminatory acts of Mississippi officials administering Federal funds.

All this affronts the conscience of the Nation.

The Commission is fully aware that the administration has followed developments in Mississippi closely, that it has taken strong and vigorous action in assuring that violators of Federal law are prosecuted, and that court orders are enforced. Despite the diligent and aggressive handling of each case as it has arisen, the Nation must be concerned that the pattern of unlawful activity shows no sign of abating. Moreover, 9 years after the Supreme Court unanimously decided that segregation in public elementary and secondary schools violates the equal protection clause of the Constitution, Mississippi has taken no step to comply with the law of the land.

Since its organization, the Commission has been deeply concerned with developments in Mississippi. Its hearing scheduled for October 1962 in that State was first postponed at the request of the Attorney General of the United States, and finally canceled. On March 26, the Attorney General, after referring to the *Barnett* case, stated that:

"While this case is pending, I continue to hold the view that a public hearing in Mississippi by the Civil Rights Commission would not be appropriate. In the meantime, I hope that the work of the Commission staff can continue as in the past on the question of the operation of Federal programs in Mississippi as elsewhere."

Since October the Commission has received more than 100 complaints from Mississippi alleging denials of constitutional rights. Investigation of these complaints, reports of our State Advisory Committee and other evidence confirm the conclusion of the Commission that prompt and firm action is now required. The Commission has concluded unanimously that only further steps by the Federal Government can arrest the subversion of the Constitution in Mississippi.

The Commission notes the action taken by the President of the United States in employing the force necessary to assure compliance with the court decrees in the *University of Mississippi* case. It is mindful of the unequivocal public statements of the President expressing his belief that discriminatory practices are morally wrong. The Commission, nevertheless, believes that the President should, consistent with his constitutional and statutory authority, employ to the fullest the legal and moral powers of his office to the end that American citizenship will not continue to be degraded in Mississippi. We urgently request that:

- (1) the President formally reiterate his concern over the Mississippi situation by requesting all persons in that State to join in protecting the rights of U.S. citizens, and, in accordance with his duty to take care that the laws be faithfully executed, by directing them to comply with the Constitution and laws of the United States;

- (2) the President continue and strengthen his administration's efforts to suppress existing lawlessness and provide Federal protection to citizens in the exercise of their basic constitutional rights; and

- (3) the Congress and the President consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State which continues to refuse to abide by the Constitution and laws of the United States; and, further, that the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi, until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States.

The people of Mississippi and of the other States should know that according to information available to the Commission in fiscal year 1962, the Federal Government received from all sources in Mississippi \$270 million. During the same period, payments from the Federal Government to the State, counties, municipalities and individuals exceeded \$650 million for grant-in-aid programs, U.S. Corps of Engineers construction contracts, military prime contracts, and direct civilian and military payrolls. Examples of additional Federal programs benefiting Mississippi include area redevelopment loans and grants, small business loans, accelerated public works projects, and Federal Aviation Agency grants.

Massive assistance to the economy of Mississippi has continued past the time when the State placed itself in direct defiance of the Constitution and Federal court orders. For example, the National Aeronautics and Space Agency is pro-

ceeding with plans to build a \$400 million moon rocket engine test center in Pearl River and Hancock Counties, Miss.

Taking into account the need to comply with statutory requirements which limit the discretion of the executive branch, and recognizing that the location of large Federal installations must reflect national needs, the Commission believes there is an overriding constitutional obligation to make certain that Federal funds are expended in a manner which will benefit all citizens without distinction. The Federal Aviation Agency failed to take cognizance of such an obligation when it granted \$2,180,000 for the construction of a jet airport to serve Jackson, Miss., without questioning the airport's plan to build separate eating and restroom facilities.

The financial benefits accruing to Mississippi and its citizens as a result of Federal programs are necessarily financed by American citizens throughout the Nation. The Commission deems it appropriate and desirable that the legislative and executive branches of the Federal Government inquire into the moral and legal considerations arising out of a situation where, in large measure, the lawless conduct and defiance of the Constitution by certain elements in one State are being subsidized by the other States.

The Commission does not want the people of Mississippi, either Negro or white, to lose benefits available to citizens of other States. Rather, its goal is that all citizens in the United States be assured the full enjoyment of the rights guaranteed by the Constitution. It is upon adherence to that great charter with its powerful moral premises that our survival as a free society depends.

Respectfully submitted.

Senator ERVIN. Call the next witness.

Mr. CREECH. Thank you, Mr. Chairman.

The next witness is Senator Paul Douglas, Democrat, of Illinois.

STATEMENT OF HON. PAUL H. DOUGLAS, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DOUGLAS. Mr. Chairman, I appreciate this opportunity to appear before this subcommittee in support of S. 1117, which was introduced by Senator Hart and of which I am a cosponsor.

This bill would extend the life of the Commission on Civil Rights for 4 more years, authorize the Commission to serve as a national clearinghouse for information and technical assistance in respect to the equal protection of the laws, and make it a responsibility of the Commission to carry out investigations of specific allegations of deprivation of voting rights, studies of legal developments constituting a denial of equal protection of the laws, and appraisals of the laws and policies of the Federal Government with respect to equal protection of the laws.

The Commission, under this bill, would be authorized, further to concentrate its activities upon those problems within the scope of its statute which most need attention. The bill also provides rules for the conduct of Commission hearings.

It is proper that this legislation, among the President's civil rights recommendations to this session of Congress, be taken up first, and I am glad to see these hearings begin.

I hope very much that this committee will move forward in this field, not only to report this bill favorably to the Senate very soon, but also to hold hearings on a number of the other measures introduced by other Senators and myself to give effect to some of the basic protections of the 14th amendment to the Constitution.

That amendment provides not only that those born or naturalized in our country are full-fledged citizens both of the United States and of the State in which they live, it also, implicitly, forbids any State to

deny to any person within its jurisdiction the equal protection of the laws and provides that Congress shall have power to enforce the provisions of that amendment by appropriate legislation.

The rising tide of demands for the fulfillment of the guarantees of the 14th amendment—both from those deprived of its protection and from the main body of public opinion in the United States—is being met in part by vigorous and judicious Executive action under the Kennedy administration and by the Supreme Court and lower Federal courts. But the courts and the Executive should have the support of Congress in making the 14th amendment guarantees live for all citizens including those whom, nearly a century ago, the adopters of the amendment had chiefly in mind.

I therefore urge this subcommittee to review the proposals introduced by Members of the Senate and to hold hearings soon on at least several of these. In particular, I think it is time for the Congress to enact authorization for the Attorney General to bring suit for injunctive relief against denials of equal protection of the laws generally.

The present measure provides, in the first instance, for extension of the life of the Commission on Civil Rights for 4 more years. I note that this hearing is also for consideration of S. 1219, introduced by Mr. Saltonstall and a number of colleagues, which would make the Commission a permanent agency in the executive branch of the Government, as well as broaden the Commission's duties in certain respects.

I endorse the proposal to make the Commission a permanent agency, and I hope the committee will seriously consider this and so recommend. However, I am a realist and I recognize the fact that permanent extension will invoke even stronger opposition than the 4-year extension proposed in the bill which I cosponsor.

I believe permanent extension is justified because the study and defense of the guarantees of the 14th amendment, along with assistance to those who need help in enforcing these guarantees, are going to be needed for decades to come.

The legitimate demands for the equal protection of the laws and for the equal opportunity which are now concentrated in, although not confined to, one region of the Nation will neither be fully satisfied soon nor remain largely confined to this one region. Our society is one in which freedom and dignity and the desire for full citizenship can readily grow. Our society is also one in which many injustices exist in all regions despite the guarantees of the Constitution.

While the South may now be the principal scene of the drama, the North and the West have their problems too. Therefore, the permanent establishment of a commission to study and investigate the condition of civil rights and to offer expert knowledge to jurisdictions working to put the Constitution into effect is fully justified.

The extension of the present Commission is desirable, also, on the record of its excellent work during its 5 years of existence. Already, it has built up a body of knowledge which the Nation cannot afford to put aside. It has kept the Government and the Nation accurately informed with respect to needs and progress in civil rights, and this function should be extended as proposed in section 104 of the bill.

I am particularly pleased that this bill to extend the operations and life of the Commission includes authority to serve as a national clearinghouse for information, and provide advice and technical as-

sistance to Government agencies, communities, industries, organizations, and individuals.

This authority would encompass all constitutional guarantees under the equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice.

I believe now, as I have for some time, that there is a pressing need for an executive agency which can make such information and assistance available. In S. 810 of the 86th Congress which I introduced with 16 colleagues in 1959, and again in S. 1434, which I introduced with 17 colleagues in 1961, I proposed among other matters that the Secretary of Health, Education, and Welfare be authorized to supply technical and financial assistance to local school authorities in developing and applying their plans for desegregation.

That proposal was a very moderate measure, as in the provision of S. 1117 that general responsibility for such assistance be given to the Civil Rights Commission, when compared with the punitive measures which have been proposed. Surely this proposal to set up a system of providing assistance and information when it is requested should meet with the approval of all Senators.

I urge the committee to adopt this proposal and to authorize appropriations fully adequate to meet the demands which will be made for these services. In my 1961 bill to authorize the furnishing of technical assistance and information to school districts, I tentatively proposed authorization of \$2½ million a year for this purpose.

While administration witnesses will be able to give more informed estimates, I would think the requirements of the authority proposed in S. 1117 will be very much greater than this. But I say this is a sound and beneficial investment in the fundamental strength of our Nation.

Mr. Chairman and gentlemen, I am going to attempt to bring out a lesson from history as to the desirability of continuing the Civil Rights Commission. In my judgment, if we had had such a Commission during the years following 1876 to inform and stimulate the conscience of the Nation, we would have been in a far happier position today. Instead of that we allowed the moral fervor behind the anti-slavery movement to evaporate in the materialism of the post-Civil War period and in the shabby and indeed shameless deals of the political parties to subvert the intent of the 14th and 15th amendments.

For it is a sober fact, although sometimes ignored with averted gaze, that Tilden was counted out from the Presidency and Hayes improperly declared elected in 1877 as the result of such a deal.

In return for the electoral votes of South Carolina, Florida, and Louisiana, Hayes and the Republicans agreed to withdraw the Union troops from the South and, in effect allowed the white South to deal with the Negroes unimpeded by national action under the 14th and 15th amendments. The disenfranchisement of the Negroes soon followed.

All but one of the civil rights statutes were repealed and public opinion in the North was anesthetized. Then under the fear of a populist union between the poor whites and the Negroes (which had been partially consummated in the elections of 1894), the southern planter aristocracy passed segregation laws and ordinances and the Supreme Court approved their practice under the so-called separate but equal doctrine in 1896 in the famous case of *Plessy v. Ferguson*.

Only the sturdy John Marshall Harlan dissented from this opinion, when he correctly and succinctly stated that the "Constitution is color blind."

For nearly half a century the conscience of the country, both North and South, slept, and under the delusive absence of agitation, festering sores continued and, indeed, even increased. Had there been a Civil Rights Commission during this period the country would have been better informed and would have recognized what was going on. Progress could then have been made in both North and South. We allowed time, however, to slip through our hands and, as a result of denying change for too long, we are now in the position where a large section of the population finds itself unable to believe that a new day is necessarily dawning.

It is important that this inevitable and ultimate change, which is surely coming, be made as rapidly and as peacefully as possible. This can be done. Countries like Brazil, for example, have been able to make the transition from slavery to full citizenship far more successfully than have we.

Undoubtedly there are still many who would like to see the conscience of the Nation anesthetized once again and who by voice and pen are doing their best to effect this.

It would be fatal for them to succeed, and this is the major reason why I favor the continuation of the Civil Rights Commission, permanently if possible.

For this is one of the best ways in which humane opinion both South and North can cooperate to make orderly progress in dealing with our greatest internal problem.

In the words of a modern poet—I think it is Edna St. Vincent Millay—"It would serve to stab our spirit fast awake."

Thank you very much.

Senator ERVIN. Senator, if I recollect the record, there is a pretty considerable body of history to the effect that we did have a Commission at the time of the Tilden-Hayes controversy. There was an Electoral Commission—

Senator DOUGLAS. Yes.

Senator ERVIN (continuing). Which was supposed to investigate; and you know we Democrats have always felt that the Electoral Commission sort of stole the election away from the States of Louisiana and Florida.

Senator DOUGLAS. But behind the decision of the Commission lay the pledge that Mr. Hayes gave to the South that he would withdraw the Union troops.

Now, that has been published, and that is the record.

Senator ERVIN. That is true.

Senator DOUGLAS. And behind it also was the tacit agreement that once the Union troops were withdrawn the white South could do what it wished without any interference by the Federal Government. So, in effect, we washed our hands of responsibility.

Senator ERVIN. It is true that the army of occupation was then withdrawn from the Southern States.

Senator DOUGLAS. Well, I am not in favor of a permanent army of occupation, but I am certainly in favor of Federal action to protect individuals in the guarantees given by the 14th and 15th amend-

ments. The sad truth is that the Federal Government did not do this from 1877 on, until the 1940's, or until more recently, one could say, until 1954.

Senator ERVIN. The difference between the Senator from Illinois and myself, I think, is on our methods of approach. I am a great believer in the administration of justice, and in my honest opinion there are sufficient statutes now on the books to give everybody his civil rights in all areas of life according to procedures which conform to the Constitution.

I think there is already plenty of discussion in racial matters. I do not think we need the Civil Rights Commission to continue that discussion because I think that that is discussion which proceeds daily in all areas, and sometimes I fear that it prompts extremists on both sides to advocate very unwise measures.

However, I have a very high respect for the Senator from Illinois on this point. I know he is a sincere student of history and other phases of life. I have always listened to him with interest, and he always makes a very eloquent statement.

I personally appreciate his coming before the subcommittee and telling us his views.

Senator DOUGLAS. I thank the Chair.

Senator KEATING. I just want to add my word of commendation for a very fine statement of an interesting historical sidelight on the necessity for this Civil Rights Commission.

The Senator from Illinois has been a stalwart in this field, and those of us who have a deep interest in it are very appreciative of his efforts.

Senator DOUGLAS. I thank the Senator.

Senator BAYH. Could I ask my colleague from Illinois to add his usual enlightenment to the record. For a moment, if you would, would you make a statement on the area in which you feel a Civil Rights Commission perform services to the country in an effort to provide equal human rights for all American citizens above and beyond the area in which the official capacity of the Attorney General and the Department of Justice might act?

Senator DOUGLAS. Well, I think that it can lay a basis of fact, and has laid a basis of fact, as to whether there are equal rights in voting, in schooling, and the other areas. The reports of the Civil Rights Commission are an arsenal of facts, an encyclopedia of fact which is an arsenal against error.

Now, there is another function which is added in both of these bills; namely, that it act as a clearinghouse for information and may also serve to counsel and assist groups which are faced with these problems.

I hope the committee will forgive me when I say I think this principle was first embodied in bills which I sponsored in 1958 and again in 1959 and in 1960.

In those bills we tried to establish such responsibility in the Department of Health, Education, and Welfare. Now it is proposed that it be more general and confined to the Civil Rights Commission.

Unless there is an agreed basis of fact, it is very hard to get action. I believe that the Department of Justice should be given power to intervene in order to defend constitutional rights, but when it does so it appears as a litigant, and a litigant is always suspected because it is a party to the case.

There ought to be, so far as possible, a relatively neutral body which can report the facts, and I think the Civil Rights Commission has tried to be that and has been that.

Therefore, I regard this function as a supplement to the legal process, but not as a replacement for the legal process.

Senator BAYH. Thank you.

Senator ERVIN. Thank you, Senator.

Senator DOUGLAS. Thank you, sir.

Mr. CREECH. Mr. Chairman, the next witness is Mr. Carl Shipley, Republican State Committee representing the Republican State Committee for the District of Columbia. Mr. Shipley.

STATEMENT OF CARL SHIPLEY, CHAIRMAN, REPUBLICAN COMMITTEE FOR THE DISTRICT OF COLUMBIA

Mr. SHIPLEY. Thank you, Mr. Chairman, Senator Keating, and Senator Bayh, for the opportunity to appear here.

I will abbreviate my statement, if I may, and include it in the record in its prepared form, copies of which have been supplied to the subcommittee.

Senator ERVIN. Let the record show that this entire statement of Mr. Shipley will be printed in full in the record at this point.

Mr. SHIPLEY. Briefly, Mr. Chairman, we believe it will serve the Nation's interest for this subcommittee to report favorably on S. 1219 to make the U.S. Commission on Civil Rights a permanent agency in the executive branch of the Federal Government.

We think it is important to note the distinction between the bill proposed by the Democratic Senators, in which some Republicans have joined and which, I think, reflects the Kennedy administration's position that the Civil Rights Commission should be extended on a limited or temporary basis as provided in S. 1117, and S. 1219, the Republican bill, which more nearly reflects the provisions of our Republican Party platform, which has as its purpose the building of a better America.

The commitment of the GOP to an effective program of civil rights is stated in our platform in these words, Mr. Chairman:

This Nation was created to give expression, validity and purpose to our spiritual heritage—the supreme worth of the individual. In such a Nation—a Nation dedicated to the proposition that all men are created equal—racial discrimination has no place. It can hardly be reconciled with a Constitution that guarantees equal protection under law to all persons. In a deeper sense, too, it is immoral and unjust. As to those matters within reach of political action and leadership, we pledge ourselves unreservedly to its eradication.

That closes the quote from the Republican platform.

We believe, Mr. Chairman, that a permanent Commission on Civil Rights is important to the achievement of the national goals outlined in the Republican platform.

Unless each American is himself satisfied that he has a fair and equal chance to get on the opportunity ladder and climb as far as his industry and intelligence and effort will take him, he has less than a total personal commitment to our way of life and our form of government, and he becomes a potential participant in civil unrest, and possibly subversive activity and other anti-American undertakings.

We owe it to ourselves and to the national interest as well as to the cause of decency and fair play to make the U.S. Commission on Civil Rights a permanent agency of the executive branch of the Federal Government. Thank you, Mr. Chairman, for this opportunity to be heard.

(The prepared statement of Mr. Shipley follows:)

STATEMENT OF DISTRICT OF COLUMBIA GOP CHAIRMAN CARL SHIPLEY ON
U.S. COMMISSION ON CIVIL RIGHTS

It will serve the Nation's interest for this subcommittee to report favorably on S. 1219, Senator Saltonstall's bill in which he is joined by Senators Fong, Beall, Case, Cooper, Javits, Keating, Kuchel, Pearson and Scott, to make the U.S. Commission on Civil Rights a permanent agency in the executive branch of the Federal Government and to broaden the scope of its duties. This bill would give the Commission on Civil Rights additional responsibilities to serve as a national clearinghouse for information, and provide advice and technical assistance to Government organizations, communities, industries, organizations, and individuals, in respect to equal protection of the laws, not only in the fields of voting, education, housing, employment, transportation, the use of public facilities, and the administration of justice, but in other areas of our national life coming properly within the scope of its jurisdiction. S. 1219 is a bill sponsored by Republican Senators based upon the provisions of our Republican Party Platform which has as its purpose the building of a better America. The commitment of the GOP to an effective program of civil rights is stated in our platform in these words:

"This nation was created to give expression, validity and purpose to our spiritual heritage—the supreme worth of the individual. In such a nation—a nation dedicated to the proposition that all men are created equal—racial discrimination has no place. It can hardly be reconciled with a Constitution that guarantees equal protection under law to all persons. In a deeper sense, too, it is immoral and unjust. As to those matters within reach of political action and leadership, we pledge ourselves unreservedly to its eradication."

A permanent Commission on Civil Rights is important to the achievements of the goals outlined in the Republican platform.

This committee also has before it for consideration S. 1117, which is a bill sponsored by Democratic Senators to extend the life of the U.S. Commission on Civil Rights for only 4 years. The continuation of this important Federal agency on a limited or temporary basis cannot be justified at this time. The Commission on Civil Rights, while it has caused controversy and perhaps some disturbance, has focused the conscience of the Nation on areas of our national life such as voting, housing, employment, and education where some of our citizens, particularly Negroes, are being systematically denied the full equality of the law guaranteed by our Federal Constitution. The Commission has demonstrated its value in our governmental structure. It serves a valuable purpose. Its contribution to the strengthening of our society will move us toward the national goal of having each American fully guaranteed equal opportunity in every phase of our national life along with every other American. In this way we will best guarantee the continuity and permanence of our free enterprise, capitalistic and truly democratic society under a form of representative government. Unless each American is himself satisfied that he has a fair and equal chance to get on the opportunity ladder and climb as far as his industry, intelligence, and effort will take him, he has less than a total personal commitment to our way of life and our form of government and becomes a potential participant in civil unrest, subversive activity, and other anti-American undertakings. We owe it to ourselves and to the national interest, as well as to the cause of decency and fair play, to make the U.S. Commission on Civil Rights a permanent agency of the executive branch of the Federal Government.

Senator ERVIN. Don't you consider that having the Civil Rights Commission investigate matters is a duplication of the work of congressional committees which do the same thing?

Mr. SHIPLEY. I noticed yesterday, Mr. Chairman, that one of the Republican Members of Congress, Mr. Lindsay of New York, had

recommended that one of the subcommittees hold hearings in Alabama or other areas of the South.

I think we can take administrative or, if you will, you yourself having been a member of your State's highest court, you can take judicial notice, of the fact that whatever procedures do exist, and whatever criminal or civil laws exist, are not effective. We find that possibly 1 of every 10 Americans, in our national society is being systematically deprived of certain basic rights which are provided for all Americans under the Constitution. None of us can claim to be an indigenous American. We all come from ethnic groups, such as German, Irish, etc. Some of us are Protestants, Catholics or Jews. Yet all of us, except this Negro 10 percent, can participate more or less fully, with perhaps a little discrimination here and there, but at least effectively in our national life.

We are excluding this one group from effective participation despite our laws and our Attorney General and our Constitution and our 14th and 15th amendments and the good intentions of so many people. The judicial processes that you, Senator Ervin, referred to, and to which all of us subscribe, as a matter of fact simply are not working, because these people are approaching the brink of violence. They are not satisfied to be left out.

So it seems that an agency of the Federal Government, in the executive branch, empowered even with limited powers as this Commission is, only to investigate, and that only in the field of voting, to study in the field of equal protection of the laws, and to—

Senator ERVIN. It is authorized to investigate the question of equal protection of the laws. But it is a duplication to some extent, is it not?

Mr. SHIPLEY. I think it is, Mr. Chairman.

Senator ERVIN. Of the legislative committees' work.

Mr. SHIPLEY. But I think, Mr. Chairman, Senator Javits stated the case very well, that it does offer an outlet, an escape valve, a forum, where people who do feel aggrieved can submit their grievances to the conscience of the Nation.

Senator ERVIN. Is it not also a duplication of the Department of Justice which has the FBI and other investigatory agencies?

Mr. SHIPLEY. Yes, sir. I do believe it is a duplication not only of the procedures but of the expense. But I think it is justifiably necessary because the others simply are not working to the satisfaction of this 10 percent of our population.

Senator ERVIN. Have you ever given serious consideration to the thought that any kind of a program which demands special laws granting privileges to minorities which have never been granted to any other Americans in our history must have something wrong with it?

Mr. SHIPLEY. Well, I would agree, if the wording of the statute was limited to Negroes alone, even though that seems to be the great aggrieved group or more deeply aggrieved group—but, as I read the statute and the proposal, the Commission protects the rights of all Americans equally, and it simply seeks to provide studies and appraisals and, perhaps, recommendations which would affect the rights of all Americans regardless of race or religion.

Senator ERVIN. Well, this Commission has been in existence for 6 years now. Have you ever heard of it showing any concern for any

Mr. SHIPLEY. No, sir; although I think it stands ready to receive the complaints of any group of Americans.

I think, as I say, that we can take judicial or administrative notice of the fact that this one great group, our Negro population, are those who are the end victims of, if I might term it such, discrimination on grounds of race in a systematic and broad-scale way, which is partially historical, possibly partially social.

Senator ERVIN. I wonder if we do not consider a lot of things discrimination which are really not so? For example, you have had quite an investigation of housing here in the District of Columbia.

Mr. SHIPLEY. Yes, sir.

Senator ERVIN. And I read all the evidence taken there. It left me with the decided impression that the only thing which the Commission was primarily concerned with was devising some kind of a formula by which members of the Caucasian race could be either coerced or persuaded to live in neighborhoods where the races were intermixed.

Now, do you think there is anything evil about a member of either the Caucasian race or the Negro race desiring to live in a residential community which is inhabited by other people of his own race, in order that associates of his immature children should be people of his own race?

Mr. SHIPLEY. Well, let me answer it this way, Senator. I think every American has, by reason of the provisions of our Constitution and the pattern of our national life, the decisions of our courts, every American has the right to expect that he may have equal access to every area of our national life including housing, education, employment opportunities, and all the advantages and benefits available to other Americans under our National Government.

Now, of course, in this area, as you point out, we are talking about Negroes. But we do have the National Labor Relations Board to deal with that special economic group, and we have Indian laws to deal with that special group, and we have tried over our national history, I think, to meet the reasonable expectations of the various groups that make up the fabric of our society.

In this area of housing we get into the most complicated one, and particularly so here in the National Capital.

Our party, our Republican Party, and I think there is a great deal of bipartisan support for this idea, does take the position not that you can coerce a white person or Negro to live with or by and in a community with someone else, but you must guarantee and provide the opportunity for each American, Negro or white or oriental or any other kind, to have free access and free opportunity to move wherever his talents, his ability, his money, and his tastes will permit him to go, within the rights of other people to live their lives as they want to do so.

Senator ERVIN. Your answer is very interesting, but it does not answer the question I put to you.

Mr. SHIPLEY. Well, it is a very difficult question, Senator.

Senator ERVIN. I want to know if you think there is anything essentially evil in a person's desire to live in a residential community which is inhabited by people belonging to his race?

Mr. SHIPLEY. No, sir. As a matter of fact, with respect to our National Capital, we have great areas of the city where our Catholic parochial schools have developed and nearly every piece of residential

real estate is in the hands of Catholic families with small children, and every piece of real estate that passes, passes into the hands of a Catholic family with small children because of proximity to churches and schools. Certainly the sellers systematically and justifiably discriminate in favor of other Catholics who want the benefits of and will support the church and parochial school.

Similarly, we have several areas in the National Capital which are heavily populated with Jewish people, because there is a Hebrew school in the community and a temple or a synagogue nearby. The same situation prevails in these areas, and it is thoroughly justifiable discrimination in favor of fellow parishioners.

Perhaps an occasion arises where there is a sale of a residential property, and there are 4 purchasers on the seller's doorstep. There are, perhaps, a Catholic, a Protestant, and a Negro, and a Jewish person, and each one says, "I am equally qualified to purchase; I am entitled to purchase under the law, and I want the house."

The Jewish owner says, "Well, I have supported my church and my school. My children are grown, and now I want the same opportunity to go to a Jewish family with young children; also I prefer someone who will support my church and school to have this house."

Our course, you can see the complications if the Catholic or the Protestant or the Negro files a complaint of discrimination under a housing ordinance or law. We need a law which protects against the constitutional right prohibiting discrimination in housing, without depriving other citizens of their constitutional right of freedom of choice within justifiable limits.

You see, this is the area that you get into. I do not think that either Congress or the President contemplates anything other than equal rights for all. I just simply say we must have free access, freedom of choice, individual rights for everyone, regardless of race or religion.

Senator ERVIN. The point I am trying to make is this. We have had so much agitation on this question that some people have a rather curious notion of what constitutes discrimination.

Now, for example, I think that people segregate themselves in society on the basis of race in obedience to a natural law which is that like people seek like people, and I think one of the most precious rights of all Americans, of all races, is the right to be allowed to select their own associates and associates for their immature children.

Yet I read here about an investigation conducted by the Civil Rights Commission, and statements of witnesses indicating that a lot of people do not agree with me on that point; that they think a member of the Caucasian race should be compelled in some manner to live in mixed neighborhoods rather than a neighborhood inhabited by members of his own race, and that if he is not willing to do that, he is discriminating against people of other races. I cannot accept this proposition.

I think we have had our national sanity impaired to some extent so that we are incapable of clear thinking because of this constant agitation on racial matters.

Mr. SHIPLEY. Undoubtedly this highly sensitive and emotional area of the law, of the policy of Congress, does beget a certain amount of demagoguery. But I do not know any responsible Negro leaders, indeed I do not know any Negro leaders—and I know a great many,

I work closely with them—who would hope or would expect to make any such proposal that would deprive other Americans of the right of freedom of association and choice.

All they ask is equality of opportunity, to participate in the same freedom of association and choice that other Americans enjoy.

Indeed, I think we can look at Senator Javits' great State of New York which has perhaps the most progressive, most liberal, most advanced civil rights legislation in any State of the Union in the field of private housing, and yet they find the great Negro communities joined together by voluntary preference, as are the other ethnic and religious communities.

The question is basic equality of opportunity.

If Senator Ervin, as chairman of this subcommittee, would report favorably this bill and other bills, so that a national policy would be established by this Congress to remove racial discrimination, the agitation, the unrest, all of these things, would disappear, just as they have with the Irish, the Italians, the Germans, and others.

Senator ERVIN. Do you just believe that the mere passage of laws would abolish all these problems?

Mr. SHIFLEY. I believe we went through these problems with other ethnic groups as they stepped onto the opportunity ladder and moved into the mainstream of our national life. I believe certainly the most immediate business of the Nation, regardless of the impact, the business upset, the social maladjustments or readjustments necessary, if our Nation is to continue, is that every American must have the same concern with our national life, the same commitment to it, the same stake in it as every other American. Unless this Congress establishes such a national policy and makes us all toe the mark, we will not make the necessary adjustments to include Negroes as we have done with every other racial and religious group in our national community. We must have a living accommodation with each other, regardless of race.

Senator ERVIN. My whole life has been involved with law. You have more faith in the law than I have. I do not think that racial problems or any other human problems can be completely solved by law. I think they have to be solved in the local community where people live and move and have their being. The idea that these problems can be solved by dictation from the courts and dictation from legislative bodies, I think, is what has caused an awful lot of the turmoil that is going on in this country today.

Mr. SHIFLEY. I agree, Senator. I have read many of your judicial decisions and read your speeches as they have appeared in the Congressional Record. You are a great and learned scholar of the law. You would be the first to agree that those decisions of yours, which have guided the lives and property of many Americans and have been quoted and requoted in many courts, have been followed through voluntary compliance. We depend upon a voluntary compliance by all Americans with the law, and our Constitution.

You do not have and you cannot have enough policemen, and you cannot recruit enough soldiers to send to Oxford or Birmingham or Arkansas to enforce these laws unless there is voluntary compliance. This Congress must set the national policy and serve as the conscience of our Nation and make us all see, whether we like it or not, that this Nation cannot endure unless every American, including this large

Negro group, which is growing more numerous, better educated, with higher incomes, and thus has a greater capacity to insist upon basic rights, which they have every just expectation shall be recognized has an equal chance in an atmosphere of fair play. The sooner we recognize it the sooner the problem will disappear, and we will get along with dealing with the Russians and other people.

Senator ERVIN. I am interested in some of the recommendations made in the field of housing, particularly here in the District.

Mr. SHIPLEY. We have gone pretty far out in some of them.

Senator ERVIN. You have recommendations for the abolition of discrimination in housing. There used to be a law that a man had the right to do with his property as he saw fit as long as he did not injure anybody else in his use of it. Wouldn't your recommendations work like this—if you have a policy forbidding discrimination on racial grounds in the sale and rental of housing, and if a man had a house to rent, and two men applied, one belonging to the white race and one to the colored race, and if each of them offered the same price for that house, wouldn't the owner be compelled to sell to the colored man rather than to the white man because if he refused to sell to the colored man he could be brought before a governmental agency, but if he refused to sell to the white man he could not?

Mr. SHIPLEY. I think that would be the purpose of any housing ordinance that might be promulgated in the District or any legislation which they are now considering in the House of Representatives.

However, I suggest to the Senate that none of us has the right to sell a house now, for example, to be a house of prostitution or a gambling den. We all come under prohibitions. We cannot sell our house for the purpose of violating the law, and it seems to me when we are dealing with racial discrimination we are dealing not only with a violation of the law but a violation of the Constitution itself. We have to approach it that way and we cannot separate it.

Senator ERVIN. You would not equate the sale of a house to a Caucasian as violating the laws, with the sale of a house which is going to be used for a house of prostitution, would you?

Mr. SHIPLEY. No, sir. But I think, Senator, the point I am attempting to make is, we do have restrictions on the right of an owner to sell his home now, but we do not have a restriction on his right to sell or not sell based on race alone. Racial discrimination is pretty difficult to prove. There might be other considerations.

I think this law, like all of our laws, such as the reasonable man rule, certificates of public convenience and necessity, all these vague phrases that you of the judiciary have given life and meaning to, that you would give substance and practical meaning to any housing regulations so that we could meet the goals of equal opportunity.

Senator ERVIN. In other words, is it not a fact that the Government is condemning the rights of private property in order to enforce some people's ideas of discrimination? You are robbing the man of the right to sell his house to whomsoever he pleases.

Mr. SHIPLEY. He cannot do that now. He has to—

Senator ERVIN. Well, he could up to the time when this agitation came up, couldn't he?

Mr. SHIPLEY. I do not think he could sell it for criminal purposes, as I have pointed out. He is limited, and he must sell it to a person

who can pay the taxes, a person who is going to use it primarily for residential purposes. There is a great limitation with respect to whom he can sell it to, and we are adding just one more, that he cannot refuse to sell it to anybody because of race alone, without other consideration. It is a complicated area.

Senator ERVIN. It is a complicated area, and the result is that proposed solutions are solutions based upon the theory that one group of Americans must be robbed of their rights in order to serve the interests of another group.

Mr. SHIPLEY. I cannot conceive of any court or administrative agency coming out with that kind of a conclusion in our voluntary system of law. It would be at such cross purposes with the individual's rights which our Constitution protects.

Senator ERVIN. Don't you think that if a man can be hauled up before an agency of Government on the complaint of a colored man that he wanted to buy his house which was sold instead to a white man, although the colored man offered the same price that is coercing the white people into selling to Negroes?

Mr. SHIPLEY. If that is all that the complainant had to prove, that is so. But I think you would have to prove that the failure to sell it to him was on the basis of race alone.

As I understand all of these proposals, and we have asked the city of Louisville for a copy of their new ordinance which was referred to in one of our newspapers yesterday, to see whether it might be applicable here in the making of the Capital City as a kind of a model for the rest of the country. Negroes will be given the same rights, not greater rights than other persons.

Senator ERVIN. The Civil Rights Commission made a recommendation. I believe, as a result of its inquiry into housing in the District—

Mr. SHIPLEY. Yes, sir.

Senator ERVIN (continuing). In which it recommended that the Commissioners of the city of Washington, of the District, adopt an ordinance to deprive any realtor of his license to pursue his occupation or his livelihood if he practiced any discrimination in the sale of housing.

Mr. SHIPLEY. Yes, sir; and it had bipartisan support of both political parties, but on the grounds that a realtor was not entitled to a license if he persisted in violating the Constitution and the law.

Senator ERVIN. Well, now, does that not mean that any realtor who sells the house to a white person when a colored person is desirous of buying a house and is willing to pay the same price, is under compulsion to sell to the colored man instead of the white man?

Mr. SHIPLEY. Well, it puts to him the choice as to whether he will abide by the Constitution and the laws or he will not.

Senator ERVIN. Yes. But that is to be made by an agency which is usually staffed by persons who are more or less zealots on the subject. They are to determine this whole question from something which is concealed on the inside of the mind, are they not?

Mr. SHIPLEY. Well, I think that the relationship of the real estate broker to his principal is really the flaw in this proposal. Somehow we are going to have to find a resolution of it. The agent, after all, is just the servant of the master. He is just the spokesman for the prin-

Senator ERVIN. But don't you think it is a very dangerous thing to make one's right to earn a livelihood in his chosen profession dependent upon what some other people who may be zealots find was the hidden motive in his mind at the time he acted?

Mr. SHIPLEY. I do. But I think it is more dangerous to permit the continuance of an accepted national policy of denying equal opportunity in the field of housing or any other field to 10 percent of our population. I think it is a question of conflicting dangers that we have to work out. The greatest danger of all is that we do not give to every American the feeling and the knowledge that he is being treated the same as every other American.

Senator ERVIN. Well, you are not giving the man the right to have that feeling if he is going to be hailed before a commission or agency of some kind on the complaint of a colored man, but not on the complaint of a white man.

Mr. SHIPLEY. Well, all I can say, Senator, is I am sure the sense of justice and decency which exists and flourishes in every American heart, and within the procedures we have established before our administrative agencies and our courts, that this matter can and will be resolved to the satisfaction of all, so that individual rights are equated with the rights of every individual to be treated the same in the field of housing and in the field of education.

Senator ERVIN. I believe there is something in the Scriptures that says a man looketh upon the outward appearance but God looketh upon the heart.

Don't you think it is rather dangerous to develop an area of law in which men attempt to emulate the example of God and then instead of judging by the outward appearances, judge on the basis of what is hidden in the heart?

Mr. SHIPLEY. I agree with the Senator, but I think it is more dangerous to have Oxfords and Arkansas and Birminghams occurring in Washington and San Francisco and Chicago and New York, and it is coming just as plainly as can be, because there is too large an element of the population involved, and not only the law and the Constitution but the morality itself is involved here, and we look to you as a great Senator, as a great judge, and the others in this great deliberative body to set the policy of this Nation on a course that all of us can adjust to regardless of the consequences.

Senator ERVIN. Frankly, I think that when the law undertakes to judge people, to make a man's livelihood, his right to pursue a livelihood or any other right, dependent upon what some agency judges to be the internal condition of his mind, the law has entered a field where the worst tyranny can be practiced, because I just do not think people are capable of judging those things on the unrevealed, hidden motives which prompt human action.

Mr. SHIPLEY. Well, it is on the frontiers of new thinking that we have to come to a solution. But this country will bless the name of Senator Ervin if you give us leadership in this area, and the Senate will follow you with not only this legislation but other proposals on which you will be holding hearings in a few weeks.

Senator ERVIN. I thank you. But I can assure you from my experience, that I think it is such a hazardous thing to judge people on the basis of their hidden motives rather than their external acts solely, that I am never going to support legislation to allow a man to be

branded a criminal on the basis of what he thinks in his heart when it is not revealed by any certain indicia of his external behavior.

Mr. SHIPLEY. Well, I think the Senator is exactly correct on that. We must do this all within the framework of our established judicial procedures, and authorize these agencies to act only on the record supported by substantial evidence, with the right of appeal to our courts, right on up to the U.S. Court of Appeals and the Supreme Court, but in the end I am sure it will all come out right if we are given the leadership at the national level.

Senator ERVIN. I have enjoyed very much your frank and clear discussion and the very lucid way in which you have presented your statement.

Mr. SHIPLEY. Senator, I appreciate the opportunity to be here. I realize your views are soundly based on the experience of a lifetime and based upon the experience in your own locality, and so on, and you view these things through the colored spectacles, let me say, of this specialized experience of yours.

I am presenting the views of a great urban area with a 55-percent Negro population, and I am expressing the views of a political party that was founded on this concept of equal opportunity for all. We all feel committed sincerely to it, and I hope you will accept my remarks in the spirit in which they were given.

Senator ERVIN. I certainly feel you are entitled to your opinion.

Mr. SHIPLEY. Thank you, sir.

Senator ERVIN. I would say as far back as 1883 the Supreme Court of the United States pointed out in a very succinct manner what is the trouble with all of the so-called civil rights laws of modern vintage when it said that there ought to come a time in the advancement of the Negro race when it ceased to be the special favorite of the law and had its rights adjudicated by the same laws by which all other men's rights are adjudicated.

The trouble with all these civil rights proposals that I have seen is that they undertake to ignore that statement of the Supreme Court and undertake to give Negroes special privileges never sought by or granted to any other Americans in our history. I think that is a negation of equality before the law rather than promoting equality before the law.

But I thank you.

Mr. SHIPLEY. Thank you, Senator Ervin.

Senator ERVIN. Do you have some questions?

Senator BAYH. Yes, if Mr. Shipley would not mind. I think it is a healthy sign when our major political parties are interested in one of the major sociological problems of this age.

However, I hope you will agree with me that the issue of civil rights, the protection of basic human rights, is not one of pitting Republicans against Democrats, and that certainly nothing is to be gained for Negroes or any other American by one political party trying to out-promise the other, and ignoring the reality of trying to get things into concrete legislative proposals and get them enacted into law.

I would like, for that reason, if I may, to examine your position relative to the two bills. You state, Mr. Shipley, that a temporary extension of the Commission cannot be justified, and you make much of the fact that this proposal comes from Republican Senators—why Republican versus Democrats I do not know.

Do you mean that if it is not possible to get votes to get the Commission extended for a 4-year basis that the Commission should be allowed to lapse completely?

Mr. SHIPLEY. No, indeed, I do not. The Commission would expire on September 30, 1963, unless it is extended. I believe that the President, President Kennedy, is compromising on a matter of basic principle when he implies to the Nation that the importance of a Civil Rights Commission is only in the sphere of limited or temporary life, and that if he would bring the full force of his leadership and the power of his great office to bear in these two deliberative bodies where he has voting majority, 2 to 1 in the Senate and 3 to 2 in the House, he would carry—

Senator BAYH. You are getting into the issue I stated before; you are trying to make a football out of something that is a matter of basic human rights.

Mr. SHIPLEY. If I am, I am following the Democratic leadership, Senator.

Senator BAYH. The request for this extension is exactly the same kind of request for extension that the previous Republican administration has made. You have to look reality in the eye.

You say that under no circumstances can a temporary extension of the Commission be justified. Now, if, in the wisdom of this committee, it appears that the votes are not available to get a permanent extension, would you favor a 4-year extension rather than letting the Commission lapse, as you said it would, in November?

Mr. SHIPLEY. I think so. I think matters of civil rights are bipartisan in nature. However, I do think we have these differences. I think it is significant that in the Democratic bill, S. 1117, that some Republican Senators have joined.

However, I find not a single Democratic name on the Republican bill, for a permanent agency.

Senator ERVIN. May I suggest, if I may interrupt here, it shows that the Democrats are more optimistic. The Democrats apparently think they are going to get everybody to conform to their views in this area before the last lingering echo of Gabriel's horn trembles into ultimate silence. The Republicans appear to be a little more pessimistic in their views on that.

Senator BAYH. Mr. Chairman, I ask the subcommittee record to show that the chronological introduction of these bills is such that the Democratic bill was introduced as of the 19th of March, and an effort was made to open the doors, to get all the Members of the Senate to join in the sponsorship on this.

On the 28th of March, a week or so later, a Republican bill was introduced, without any effort being made to solicit the support of any Democrats. That is why I think it is most unfortunate that we are getting into the realm of partisan politics in a matter of basic human concern to all American citizens.

Now, I said in my statement, as you probably recall, that I feel the distinguished chairman and I agree that we disagree, and that is the part of this democratic with a small "d"—

Senator ERVIN. Despite my optimistic nature, I sometimes have a feeling of despair that, caught between two groups in this particular field, my efforts to try to preserve basic constitutional rights for all Americans of all races in all generations might suffer because each

one wants to show more zeal for the groups that disagree with those on my side of the fence.

Senator BAYH. Mr. Chairman, you are very gracious in allowing us—

Mr. SHIPLEY. The chairman probably summarizes the situation that does exist, Senator Bayh, and I think it does raise an important point. Civil rights is the business of every American, and it should be bipartisan. Unfortunately, both political parties, depending on who is sitting in the White House, have tended to exploit the emotional aspects of this whole area.

I recall that when the President was a Senator, and when he was campaigning, he certainly garnered many votes by promising widely throughout the Nation that one of his first acts would be to introduce a civil rights bill, and I think we Republicans would be remiss in not calling that to the attention of the Nation, that he has not introduced any broad-scale civil rights bill yet; that he has, perhaps, after a couple of years, gotten around to doing a little something in the field of voting, and now we find in S. 1117 which, I presume, has the President's support since it relates to the 4 years he mentioned in his message on this subject, and here we find a very limited or temporary bill, which is certainly something like half a loaf in the field of even the extension of this provision of the Civil Rights Act of 1957, which certainly the Nation must know was sponsored, and passed by Congress under a Republican President.

Senator BAYH. Mr. Chairman, there is little to be gained by haranguing against the President of the United States.

I have a couple of questions I would like to ask you.

Mr. SHIPLEY. I apologize if I seem to be haranguing.

Senator ERVIN. Off the record.

(Discussion off the record.)

Senator BAYH. I am certain we can all bat back and forth the truth of the accusation about the President's efforts in civil rights, and that neither Mr. Shipley or myself could come to any agreement, but that is not the purpose of this hearing.

As far as the extension of this particular Commission is concerned, my statement said earlier, that I thought it should be extended for so long as it is necessary to solve this problem, and I certainly think Democrats and Republicans alike realize that the entire world is looking to us to see whether democracy and the free enterprise people, run-your-own-show type of government, can solve an important problem which is being publicized around the world.

Do you view with any alarm at all the possibility that in the minds of some foreign people, people of other nations, if we make this Commission permanent we are recognizing that this is a permanent problem which we are not going to be able to solve? I do not believe the President says that the problem is going to be solved in 4 years, just as the previous administration did not say it was going to be solved in 2 years, but this is an effort to make a longer extension than has ever been made before to give the staff more permanency, an opportunity to dig the roots down.

But do you consider—this is perhaps a propaganda weapon against us if we admit we have a problem that is going to go on ad infinitum, so to speak?

Mr. SHIPLEY. Senator Bayh, I think our national policies too often are adjusted to meet the criticism or the anticipated criticism of neutralists or Communists or even our friends around the world.

Our problem is in our own Constitution. We wrote it and we can read it. If it is not being enforced, then we know it is not being enforced.

Senator BAYH. Do you believe we are living in a world where there are not one-hundred-some odd other nations, and that we can put a wall around us and not fear any other country?

Mr. SHIPLEY. That is true. But our problems are purely domestic problems, and they cannot and should not be resolved with any reference to the rest of the world and in conformance with their views. They should be resolved in conformance with our Constitution and the civil and criminal laws of our land.

For me it would not be any justification for offering a watered-down piece of legislation with respect to the Civil Rights Commission. If that is what is in the back of the President's mind, I think he is compromising for political reasons in offering a limited bill, and he is comprising the civil rights of our Negro citizens. That is all. As has so often happened in other areas, the Negro leaders recognize this, we all recognize this, and there is no use in kidding ourselves or kidding each other about it.

Senator BAYH. Your statement leads me to believe that we have a basic disagreement in this.

Mr. SHIPLEY. If you will join in S. 1219, you wouldn't—

Senator BAYH. If you would let me finish, I could set down my position and you could contrast it with yours, if there is a difference.

Mr. SHIPLEY. Yes, sir.

Senator BAYH. By saying that civil rights is purely a domestic problem, I think we show a complete lack of realization of what we are doing today in the world.

We are engaged in more today than protecting the basic rights of each American citizen. This is our primary goal. But above and beyond that we are looking at a situation in which the United States is engaged in a war for survival, and we are confronted with the Communists whose leader said that they were going to bury us, they were going to surround us, they were going to strangle our economy. The other nations are looking to see whether we can produce as we say we can produce, and it is an important element in our foreign affairs.

It is an important element in our foreign policy that we can show the rest of the world what democracy actually does, what it can accomplish in the area of civil rights, employment, education, and these other problems that are classified as domestic.

I do not think that we can continue to ignore our problems at home and say they do not have an impact around the world.

When Pravda prints a picture of a police dog confronting Negroes, if this does not have a detrimental effect on the United States, and if it does not become more than a domestic problem, then I am sadly mistaken.

Mr. SHIPLEY. I am surprised at the Senator from Indiana. If they have civil rights in Russia I haven't heard of any of them yet. Indeed, all of these countries you are concerned about, do not have anywhere near the civil rights that we have. Even in England, the civil rights that we have find no comparison.

So why should we be influenced one way or the other by 107 countries in the world which do not come anywhere near us in civil rights? Would you propose, if these countries are opposed to civil rights, are you saying that we should resolve against our having civil rights?

I think we should totally ignore these other nations and resolve our problems as we think we should resolve them, in conformance with our Constitution and our civil and criminal laws.

Senator BAYH. Let us examine what I said.

Mr. SHIPLEY. You are saying that we should have concern about Russia and the other countries in the world. I am not familiar with—

Senator BAYH. Apparently not. Apparently Mr. Shipley is the only one who is—

Mr. SHIPLEY. I do not want to be discourteous, but you are leaving a false impression here. These other countries do not have anywhere near the recognition of civil liberties that we have; not in South America, not even our neighbors in Canada.

Senator BAYH. By your own admission, sir, you are not willing to let the United States do half a job just because it is better than some of the other nations in the world, are you?

Of course, you are not.

Mr. SHIPLEY. No, sir.

Senator BAYH. We are trying to do the best possible job we can, and, for this purpose it does not make any difference what kinds of civil rights the other nations have. I want them to say that we are doing a good job in Indiana and the United States. I am not worried about what kind of a job they are doing in Russia, but I am worried about what kind of a job we are doing in the United States.

Let me ask another question that goes to the specific accusation you made about this being a watered-down version, an effort to offer a political plum toward the Negro vote on the part of the President of the United States.

Mr. SHIPLEY. No, I did not say that.

Senator BAYH. In Senate bill 1117 it provides for an increase in the subpoena power of the Commission. This provision is not in Senate bill 1219. Does this suggest to you that this is a watered-down version? Are you opposed, is your party opposed, to strengthening the Commission by giving these increased powers?

Mr. SHIPLEY. Well, those are not increased powers. Those are simply procedures. The only increased powers—

Senator BAYH. But the Commission would have the opportunity to do more and to find out more in the area of civil rights.

Mr. SHIPLEY. The only increased power is, S. 1117 is the same, and that would add to the power to investigate, study and appraise the power to act as a national clearinghouse. The language is identical in both bills.

Senator BAYH. That is not true. If you read the bill closer you will find that S. 1117 does provide additional subpoena powers that are not in S. 1219. I am not arguing one bill or the other, but are you against or are you in favor of strengthening the subpoena powers of the Commission on Civil Rights?

Mr. SHIPLEY. I think the Commission should be strengthened. The Republican bill simply adds at the end that the Commission shall have all power necessary to make rules and regulations.

Senator BAYH. It says nothing whatsoever about the subpoena powers. Are you in favor of the provisions that are in S. 1117 as far as those are concerned?

Mr. SHIPLEY. Yes, sir.

Senator BAYH. Then the record can hardly show that you believe this part of the bill is a watered-down effort.

Mr. SHIPLEY. Oh, no.

Senator BAYH. Fine.

Mr. SHIPLEY. I am not saying that, Senator. Republicans like Mr. Scott and the others who have joined, and Mr. Javits who have joined in S. 1117, I think they reflect the view that certainly everything in that bill should be supported by Republicans. But I think the watered-down aspect of it is that the President has not put his full power on the line to make this agency permanent rather than to imply it is just another continuing temporary thing, as kind of a sop to its opponents.

Senator BAYH. It is twice as much an extension as has been provided for previously. That is not a watered-down version.

Mr. SHIPLEY. The President is to be commended for that.

Senator BAYH. One other question with respect to the bill, Mr. Chairman, if I may.

I know you are anxious to close up.

Senator ERVIN. I just wish to ameliorate this discussion. I was going to agree with Mr. Shipley that the Democratic bill is bad, and I agree with you that the Republican bill is bad.

Senator BAYH. That shows that we have a real impartial chairman. [Laughter.]

One other question, if I may. In Senate bill 1117, it provides for \$25 increase in the per diem compensation of the Commission, an effort to try to make the burden of service less great, an effort to try to more adequately compensate the members of the Commission. S. 1219 does not.

Are you opposed to this increase; do you feel that this increase should be granted and would strengthen the bill?

Mr. SHIPLEY. I think that those are reasonable proposed increases, although I do not think the test of whether these men like Dean Griswold of Harvard Law School, and the dean of Howard Law School are for hire at \$75 a day or \$12 a day.

I think the important question is they should be compensated for their necessary expenses, and that we do not try to hire people to resolve important questions of this kind. It carries a great responsibility, and I think the President has wisely chosen men of considerable prestige and learning in their specialized field that truly represent the national conscience, and we certainly do not want to make this a job that people apply for or compete with each other to get by reason of its stipend.

Senator BAYH. I do not think we are ever going to make this a job like that. But I think we need to point out for the record that any bill that is composed of individual parts is like a human body, and we have to look at each part at a time.

You apparently agree with the two latter provisions that are contained in the so-called watered-down bill, and you feel they would strengthen the Civil Rights Commission?

Mr. SHIPLEY. Yes, sir. I think the provisions of S. 1117 would. The only fault I find with it, and I think the Republican Party can find fault with it, is that it does not go far enough to make this agency permanent. That seems to be our political difference on the matter and, of course, I think that is a partisan difference, to some extent.

Senator BAYH. That comment, Mr. Chairman, is the end of my statement or rather my questions. I regret that, perhaps, my voice was raised a bit.

Senator ERVIN. I think you kept yourself in very good bearing and you have shown remarkably good humor.

Senator BAYH. I am not accustomed to having the area of civil rights become embroiled in a political controversy nor to having the President of the United States, at least on a very narrow edge, accused of being less than sincere in his efforts and less than complete in fulfilling the promises made in the field of civil rights, because this is not the case.

Mr. SHIPLEY. I suppose the record will speak for itself in all those connections.

I appreciate the opportunity to have appeared before the subcommittee, Mr. Chairman, and I can assure you that the Republican Party in the Nation's Capital will do its best to support any proposal which strengthens this agency and advances the cause of equality of opportunity for all citizens.

Thank you, sir.

Senator ERVIN. We will call the next witness. We have got to get over to the Senate at 1:15.

Mr. CREECH. Mr. Chairman, the next witness is Mr. Sexton—Mr. John Sexton of the Young Democratic Club of the District of Columbia.

Mr. Sexton?

STATEMENT OF JOHN J. SEXTON, PRESIDENT, YOUNG DEMOCRATIC CLUB OF THE DISTRICT OF COLUMBIA

Mr. SEXTON. Mr. Chairman and members of the subcommittee, my name is John J. Sexton. I am president of the Young Democratic Club of the District of Columbia. I appreciate the opportunity to appear today on behalf of the 800 members of the Young Democratic Club of the District of Columbia to urge you to report favorably S. 1117, a bill to extend for 4 years the Commission on Civil Rights as an agency in the executive branch of the Government, to broaden the scope of the duties of the Commission, and for other purposes.

The Commission on Civil Rights was established in 1957, with a 2-year life, which has been extended, for 2 years on each occasion, in 1959 and 1961. During this period, the Commission has held hearings all over the United States, and has collected information through the efforts of staff workers and the State advisory committee. Conferences of educators and housing experts have also been held. The Commission has published several excellent reports.

The Young Democratic Club of the District of Columbia believes that the record of the Commission on Civil Rights strongly supports an extension of its existence. We support the 4-year extension proposed in S. 1117 in order to permit the Commission to plan for several

Civil rights are so closely related to individual emotions (often at a very high pitch in this area) that the aid of an independent expert governmental group is extremely important for the dissemination of objective information. Much of the information about civil rights matters is distorted. The Commission is in a unique position to make a disinterested and objective appraisal of civil rights matters and to inform the President and the Congress and the people of the actual facts.

In addition, the Commission should be able to disseminate information to Government agencies, communities, industries, organizations, and individuals. The Young Democratic Club of the District of Columbia supports the provisions of S. 1117 authorizing the Commission to serve as a national clearinghouse for information and to provide technical assistance on civil rights matters.

Nothing contributes more to civil rights problems than ignorance and misunderstanding, which, particularly in this area, lead to hatred and fear. Nothing will help as much to improve the situation as will widespread knowledge of the facts—not just part of the facts, but all of the facts; not merely facts about civil rights problems in one region of the country but facts about civil rights problems all over the United States. Civil rights is not a regional problem, but a national problem. An information clearinghouse at the national level would be helpful to the dissemination of facts on civil rights issues.

The Young Democratic Club of the District of Columbia also supports the other, more technical provisions of the bill, revising pertinent travel expenses and somewhat extending the subpoena jurisdiction of the Commission. Allowing a subpoena of a witness to a hearing within 50 miles of where the witness is, even if this is in another State, is reasonable. Rule 45(e) of the Federal Rules of Civil Procedure allows a subpoena to be served within 100 miles of the place of hearing.

The essential thrust of S. 1117 is that there should be at the national level an organization dedicated to dissemination of information and advice about civil rights matters. The more informed all people are, the better the judgments they will make about current issues. A national clearinghouse for civil rights information will be an important service to all citizens of the United States and the U.S. Commission on Civil Rights has demonstrated that it is well qualified to perform this important function.

I would just like to add that I certainly agree, and I think the club agrees, that civil rights is not a partisan matter between either party, but it's a matter of the basic rights of our citizens, and that the decisions that ought to be taken in this area should not be based upon political considerations but we should do them because they are right.

The Young Democratic Club of the District of Columbia urges you to report S. 1117 favorably.

Senator ERVIN. The committee wants to thank you for making your appearance and presenting your views and that of the Young Democrats of the District of Columbia.

Senator BAYH. Let me just say one word. I would like to compliment the witness for his interest. As I mentioned to Mr. Shipley, I think it is wise to have a young political organization interested and, Mr. Chairman, with due respect to you and because you have done such a wonderful job presiding here, I would like to emphasize one point

that the present witness has made, that I do not believe civil rights is a regional problem. It is a problem that confronts our whole country, and that those of us who live in other areas of the South who are so smug and feel we have this civil rights problem solved are not being honest with ourselves.

Senator ERVIN. I hope that view prevails generally because I have been trying to say that you cannot rob one set of people of their basic constitutional rights, for if you do, the law will soon come back to curse another group.

Senator BAYH. Thank you. Civil rights, if they are not given to citizens of an Eastern State, then they are not held by citizens of the South, and if they are not held by citizens of the South, if there is a deprivation of their rights, there is a deprivation of the rights of citizens in the Western States as well as the Southern States.

Senator ERVIN. We will stand in recess until 10:30 tomorrow morning.

Thank you.

(Whereupon, at 1 p.m., the subcommittee was in recess, to reconvene at 10 a.m., Wednesday, May 22, 1963.)

CIVIL RIGHTS COMMISSION

WEDNESDAY, MAY 22, 1963

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m., in room 2228, New Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee), presiding.

Present: Senators Ervin, Bayh, and Keating.

Also present: William A. Creech, chief counsel and staff director; and Bernard Waters, minority counsel.

Senator ERVIN. The subcommittee will come to order.

According to the schedule, Senator Saltonstall is the first witness.

Senator, we are delighted to have you with us and will hear you at this time.

STATEMENT OF HON. LEVERETT SALTONSTALL, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator SALTONSTALL. Thank you, Mr. Chairman. I appreciate the opportunity of appearing here before you. You and I have sat at the same table a good many years now and I think this is the first time I have appeared formally before you and the gentleman on your left, Mr. Keating.

I appreciate the opportunity to appear in behalf of my bill, S. 1219, which would make the Commission on Civil Rights a permanent agency in the executive branch of the Government and broaden the scope of its duties. Since its creation under the provisions of the Civil Rights Act of 1957, the life of the Commission has been extended twice for 2-year periods, first in 1959 and then in 1961. It presently is scheduled to expire on November 30 of this year, 1963.

Previous extensions of the Commission have not been accomplished without delays. A period of uncertainty has accompanied each proposal for extension. Such uncertainty cannot but affect the nature of the work of the Commission, and increase the difficulty of obtaining and retaining a competent, professionally trained staff.

If necessary, meaningful, and helpful long-range studies are to be undertaken, and a comprehensive, well-balanced program developed, a sense of Commission permanency is required.

At the present time about half of our States possess commissions on human rights. In my opinion, we need to place the U.S. Commission on Civil Rights on a permanent basis just as these States have done.

To grant permanent status to the Commission is not to abdicate congressional authority or to imply, as some individuals have asserted, that we view pessimistically the possibility that the civil rights questions in the United States will ever be solved.

Congress will retain the opportunity for regular review of Commission activities because the Commission will be coming before the Congress annually for appropriations.

If the Commission should cease to perform a necessary or useful function, Congress can decline to appropriate funds for its continuance. Meanwhile, it will have the status that goes with increased independence and security.

The Commission serves as a tangible reminder to minorities, to the Nation, and to the world that our Government recognizes there is much to be done before all Americans enjoy equal opportunities and rights.

We will all recognize that unfortunate differences exist in these respects between citizens, and that these inequities are by no means confined to any single area of the country or to any one minority group.

A bipartisan body which represents all geographical sections of the Nation and includes men of the high caliber of those who have served on the Commission to date, can do much to point up, in a dispassionate, objective way our national deficiencies in the civil rights field.

I believe the Commission is doing a good job in a most difficult and important area of our national life, and hope that it will continue to function in as commendable a fashion in the future.

It is important to have a body such as the Civil Rights Commission to which individuals, entire communities, and Government agencies can turn for assistance and advice, and to which complaints about alleged deprivations of civil rights be directed.

The psychological impact alone, of such an organization is great, but its positive contributions to the attainment of a better society can be even greater. We need such a body to seek out the facts and to set them forth for all of us to ponder.

The reports of the Commission have proved useful. They have included studies in the areas of voting, housing, education, administration of justice, and employment, with a report on the status of equal opportunity in the Armed Forces among those to become available this year.

Hearings and conferences have been undertaken to gather information which would be helpful in gaining an understanding of the situation which confronts us as a Nation.

Hearings on the status of the equal protection of the law, to cite one example of Commission activities, have been held in all areas of the United States, including New York, Chicago, Cleveland, Detroit, Atlanta, San Francisco, Los Angeles, Phoenix, Memphis, Newark, and Indianapolis.

Conferences have also been held to bring together educators to share their experiences and to exchange information and advice.

Helpful as the Commission activities have been, I believe that it can make an even greater contribution in the civil rights field. For that reason, S. 1219 proposes to expand somewhat Commission responsibilities.

Increasingly, there is a need for expert assistance in the preparation of practical programs which will carry local communities and private groups forward to the desired civil rights goals.

The commission does, of course, presently furnish limited assistance to groups and individuals concerning civil rights problems.

It has also advised the executive branch about desired policy changes and the administrative techniques required to make them effective.

But these efforts need to be raised to the level of the factfinding and reporting functions of the Commission, if the full measure of the potential impact is to be realized.

Therefore, my colleagues and I are suggesting that clearinghouse and technical assistance functions be given more recognition as responsibilities of the Commission. They will become more and more important as time goes on.

Probably most of us would not agree with every recommendation of the Commission. But this is not relevant to the question before us. We can all agree, I think, that the Commission has operated in a responsible fashion, has made a constructive and important contribution to the body of knowledge available about the status of civil rights in this country, and is in a position to be of significant assistance to local communities, Government agencies, and individuals in the future, as they set about meeting the challenges before us in the area of civil rights.

I therefore urge the favorable consideration of S. 1219. I appreciate the opportunity to appear before you.

Senator ERVIN. Senator, we are delighted to have you with us.

I am somewhat regretful that such an able and optimistic person as the distinguished Senator from Massachusetts would be so pessimistic in respect to this particular field that he would think it would be necessary to have this Commission continue to exist until the last echo of Gabriel's horn trembles into ultimate silence.

I take some consolation from the fact that the Senator from Massachusetts makes a recommendation which is quite in harmony with my prophecy when this Commission was originally created, and that was that it would be saddled upon the American taxpayers forever.

Senator SALTONSTALL. Is that a question or an observation, Senator?

Senator ERVIN. That is an observation.

Senator SALTONSTALL. May I make an observation in reply?

Senator ERVIN. Yes, sir.

Senator SALTONSTALL. I know that the chairman feels that way because I have discussed this question with him.

One of the reasons that I became the sponsor of S. 1219 is that while I was the chief executive of our Commonwealth, I think it was in 1943, we had a disturbance which included rioting between Irish and Jewish teenagers, if you will, young people, in one of our sections of Boston.

I did not appreciate the seriousness of this situation at first. When it was called to my attention by a New York newspaper, I was quite firm in stating that I did not believe there was any racial disturbance in the Boston areas. I found that I was mistaken, that there had been this disturbance and I immediately appointed an unpaid commission to look into it.

As I remember it, the commission consisted of two Irish Catholics, two citizens of the Jewish faith, and two citizens of the Protestant faith. Members included the bishop of the Episcopal Church; a Catholic priest, a very high Catholic layman, and I think a Jewish rabbi, but I am not quite sure.

That commission held meetings and issued a report of findings. I think I was as proud of that act and the workings of the commission as anything that I did because I do not remember that we had any other trouble during my period as Governor. We may have had a little stir-up, but very little.

That committee has been continued, I believe, to date. I know it was continued until just very recently. I think the value of that committee and the value of the Civil Rights Commission is psychological as much as anything else. I know your feelings, Mr. Chairman, and I respect you as a gentleman and as a colleague, and I have a high regard for your sincerity. When you say "continuing forever" I do not think it is a question of continuing the Civil Rights Commission because of any likelihood that certain discriminatory activities will go on forever, long beyond your time or these gentlemen who are present here today—Mr. Bayh and Mr. Keating.

I think in cases of disturbances of a racial character, whether they be in Boston, New York, Indianapolis, or North Carolina; it is of value that a commission of this character is on the job and can be turned to to settle them. As long as we can get to serve on the commission high-type people of a nonpartisan character, people who are respected as individuals, we are doing something for the good of our country, when we continue the commission to handle such situations.

That is the reason that I sponsored this bill to make the Civil Rights Commission a permanent agency. I was, as I say, impressed by the way a similar group helped so much in Massachusetts.

Senator ERVIN. I do not mean for anything I said to be construed as criticism of you as a Senator because I do not know of anyone any more sincere or industrious than the Senator from Massachusetts.

What the Senator did as Governor of Massachusetts is entirely in harmony with my view as to the only way these problems can be solved.

As Governor of Massachusetts, the Senator established a commission which operated upon the local level where the people concerned lived, and I think there is a fundamental difference.

I do not think there is any comparison between what the Senator did as Governor of Massachusetts and what the Commission is doing. Every word in this Commission's report is an effort to enforce conformity to doctrines which many areas do not accept; and all of its recommendations, in my judgment, except perhaps two—one about the provision for the relocation of people displaced by urban renewal projects, and the proposition to amend the Constitution in one respect, are unwise. I do not agree with the proposed amendment for the most part either, but I think every one of the other recommendations of the Commission has either been unconstitutional or has contemplated an intolerable expansion of activities of the Federal Government.

This Commission is recommending that some agency of the Federal Government be given the power to supervise the activities of all the financial institutions in the United States which are regulated, in some way, by the Federal Government. It recommends that the power to

examine all loans made to Negroes or refusal to make loans to Negroes in order to determine whether or not there was any discrimination in the action of these financial institutions, be given to a Government agency.

That recommendation is not joined in by Dr. Rankin or Dean Story.

Dean Story feels that a financial institution is in business for business purposes and not for social reform; and I might add that it would be an intolerable expansion of the power of the Federal Government for it to exercise supervision of all loans and have the right to call in and question any financial institution in the United States supervised by any agency of the United States, and for it to have the power to breathe over the shoulders of lending institutions and investigate their motives in making loans.

Senator SALTONSTALL. Well, I thank the chairman. I would say that I have supported civil rights legislation dealing with voting and so on.

I have not gone as far as some of my colleagues interested in civil rights have gone, with respect to questions such as the chairman has just discussed.

Senator ERVIN. I am impressed with the Senator's statement that he did not vote for all of the recommendations.

Senator Keating?

Senator KEATING. I just want to commend my colleague from Massachusetts for a very fine statement and tell him that I am proud to be associated with him as a cosponsor of the measure which he has offered.

I think there is strong argument for making this commission permanent rather than extending it for a period of years when we have had this experience of continual harassment and difficulty every time its life seeks to be extended.

I do not think this is a pessimistic attitude. I welcome the day when the civil rights problems no longer require the existence of such a commission. They certainly do today, and as the commission has brought out very important facts which needed to be told to the American people and they will continue, I am sure, to operate in a responsible manner with the very fine men of both parties in all sections of the country who man this commission.

It is always open to the Congress as the Senator has pointed out, to deny appropriations if it is felt that they have completed their work or to pass a bill winding them up.

It seems to me that for future plannings, it is highly desirable to have the commission made a permanent agency as is envisioned in the bill offered by the Senator from Massachusetts.

Senator SALTONSTALL. Thank you, sir.

Thank you, Mr. Chairman.

Senator ERVIN. We are delighted to have the Senator with us.

Mr. CREECH. Mr. Chairman, the next witness is Senator Harrison A. Williams, Democrat of New Jersey.

Senator ERVIN. Senator, we are glad to have you with us today.

**STATEMENT OF HON. HARRISON A. WILLIAMS, A U.S. SENATOR
FROM THE STATE OF NEW JERSEY**

Senator WILLIAMS. Mr. Chairman and members of the committee, as a cosponsor of S. 1117, I certainly appreciate the opportunity to appear before this committee and say a few words of advocacy on behalf of the proposal.

The question involved here as I see it, is shall we let the U.S. Commission on Civil Rights die, or shall we let it live and expand its functions.

In my reading of the Commission's activities since Congress brought it into existence in 1957, I am convinced that not only has it fulfilled its statutory responsibility, but it has done it in a mature, legal, impartial, nonpartisan and eminently proper manner.

All across this country we are faced with difficult problems involving civil rights. Minority groups of all types face hurdles placed in their way by jealous or fearful majorities. These extend not only to the well-known racial questions involving voting, employment, education, and public accommodation, but to a host of other questions stemming from ethnic or religious differences.

I do not think we have to point our finger at the people of Birmingham, or Oxford, or Auburn, or Albany, or Little Rock.

We can look at the North, at Orange, and Englewood, and Trenton, and Camden, and Newark, for in New Jersey we have this problem too, and it extends from Cape May to Hoboken.

We are fortunate to have been spared violence, but some of our communities have segregation which limits the opportunities of the minority to obtain equal education just as surely as I am before this committee today.

Prejudice has such a hold on some of our New Jersey unions that Negroes have an almost impossible time getting into the required apprenticeship programs.

I think there are less than 10 nonwhites among a total of some 4,000 apprentices in New Jersey today. There is a difficult housing situation; cities like Trenton, where 25 percent of the city's population lives in substandard housing.

These people, most of them Negro, find their escape prevented by a combination of race prejudice and economic blockade which is, itself, the product of prejudice.

The housing situation is reaching the point of crisis. It costs Trenton, Camden, Newark, and other cities in New Jersey money to live with this prejudice. It shows up when twice as many nonwhite children drop out of school as the white children and when unemployment and welfare charges begin to mount to take care of them and their families.

Clearly, New Jersey has some deep seated and massive problems in the field of civil rights. We are working on them ourselves and only last Saturday, State Commissioner of Education Frederick Raubinger directed the city of Orange to end racial segregation in the Oakwood School before the beginning of the next school term in the fall.

We are continuing to work in a similar program and the same problem in Englewood. I think the commissioner's position, which is supported fully by our Governor, Richard Hughes, was in keeping with

everything that is right and just and I certainly compliment our State officials for these actions.

This problem is common to almost every community in the Nation and when Federal tax money is used to finance housing, manpower development, education, and military programs, all of which have an unavoidable connection with minority groups, then it becomes a national problem which the Federal Government has the responsibility to involve itself in.

If the Government of the United States is to be judged in international circles on the manner in which its citizens are treated within its States, then the same Government must move to protect these citizens.

In Newark recently, the Civil Rights Commission held one of its regional hearings. Prior to that hearing, the State advisory committee had been planning to have a hearing in Newark, but deferred to the U.S. Commission when it was requested to do so.

It was good that that happened this way, for the U.S. Commission has the subpoena power which the advisory committee does not have, and many witnesses called by the Commission had previously refused to appear before the advisory committee.

In that hearing a great many problems were unearthed from the secret caves of bigotry which Newark citizens were not aware existed in their city.

In the words of J. Stanley Husid, the chairman of the New Jersey Advisory Committee to the U.S. Civil Rights Commission, "We suddenly found a whole vista of civil rights problems in New Jersey that we had been unaware of."

That Newark hearing had an important effect in New Jersey. Immediately, the advisory committee held hearings in Camden and in Trenton and although the findings of this committee will not be available until probably next month, I have been told that conditions there are no better and in some instances, worse than in Newark.

From our experience, I know that without the guidance and encouragement and example of the U.S. Civil Rights Commission, our own efforts to combat prejudice would be far less efficient, effective, and timely.

In New Jersey, we need the Civil Rights Commission, but it is not enough just to extend the life of the Civil Rights Commission. An expanded role in my judgment is very vital.

At a time of accelerating tension in the field of civil rights we need action as well as study from the Civil Rights Commission.

I fully support the proposal to assign the clearinghouse and technical assistance functions to an expanded commission and know from our New Jersey experience that local civil rights organizations need all the expert help they can get if they are to work in an intelligent, calm, and moderate manner to solve this most severe and serious domestic problem.

A study commission at the national level is fine. But sometime we simply have to get down to the day-to-day problems of discrimination in every community. We desperately need a program to tackle the daily, specific denials of civil rights that add up to the national disgrace about which we have all heard much too much.

I can't emphasize too strongly the need for the Commission to establish field offices that can work directly at the community level

to organize, encourage, and coordinate full-scale and positive programs to achieve the goals of equal opportunity in these fields of voting, education, housing, employment, and the other areas.

I assume that the Commission plans to establish such field offices as a natural part of its clearinghouse function, but if not, I would strongly urge an amendment to the bill clearly authorizing such field offices.

In conclusion, Mr. Chairman and members of the committee, I want to offer my thanks and congratulations to the men of the U.S. Civil Rights Commission. They have contributed mightily to the forward progress of humanity in our land.

Their five-volume report of 1961, for example, is a dispassionate chronicle of man's inhumanity to man which already has had a positive and beneficial result across the country.

I would not have believed it until I read portions of these reports that it was possible for Americans to be quite so prejudiced as the Commission found in its studies of Negro efforts to secure their voting rights. There it is for all the people of our country to read.

This story needs to be told in the U.S. Civil Rights Commission and they have been telling it honestly and forcefully. It will be a long, hard job.

We must continue to work at it for our morality is at stake.

Mr. Chairman, I support this bill with all my conviction and I certainly thank you for the opportunity of being here and presenting my views.

Senator ERVIN. Senator Bayh, do you have any questions?

Senator BAYH. I would like to point out something here that the Senator hit on and that is oftentimes overlooked.

You recall as we were parting for the joint session yesterday that this matter of racial discrimination or the protection of basic civil rights is not confined to one geographic area of this country, and sometimes some of us tend to look over the fact that it is right under our own nose and I appreciate the fact that the Senator pointed this out.

Senator WILLIAMS. I know where my battleground is. It is right in my hometown of Westfield, N.J. My folks do not like to hear me say it, but I say it. It is right in my neighborhood.

Senator ERVIN. The Senator's statement very frankly admitted that there is some discrimination in his own State.

I would like to have everyone be that frank. I am not referring to any Members of the Senate, but when there is an outbreak of racial violence in Chicago, officials usually say that is "fallout" from Birmingham or somewhere in the South. They do not accept responsibility for it. They have problems lying on their own doorstep, but they ignore them, and say something about sinful conduct in the distance.

I am glad the Senator from New Jersey does not take that attitude.

Senator WILLIAMS. We have had a little violence in New Jersey. The last episode was at Princeton University as a matter of fact. So I do not get too moralistic or feeling righteous about our having answered all of our problems up North and point the finger as I said at people who are making mistakes in the South.

That is why I think these field offices are so important. We need help. We need it from thoughtful, moderate people who can come to

the ignorance of prejudice and guide us into the land of understanding and reason.

Senator BAYH. We have this problem in Indiana. I would like to point out in the last 4 years we have established a very strong working, well-organized civil rights commission in the State to solve this problem and I know it would interest the additional assistance that your State commission felt that this Federal Government added to their emphasis in the local area.

Senator WILLIAMS. Yes, it opened the door to very helpful things. I appreciate the opportunity to appear before you.

Mr. CREECH. Mr. Chairman, the next witness is Mr. John de J. Pemberton, Jr., of the American Civil Liberties Union. He is accompanied by Mr. Lawrence Speiser.

**STATEMENT OF JOHN de J. PEMBERTON, JR., EXECUTIVE DIRECTOR,
AMERICAN CIVIL LIBERTIES UNION, ACCOMPANIED BY LAW-
RENCE SPEISER**

Senator ERVIN. We are glad to have you gentlemen with us.

Mr. PEMBERTON. Thank you. Members of the committee, my name is John Pemberton, and I appear as executive director of the American Civil Liberties Union to present its views advocating the extension of the life of the Commission.

By way of identification further, I, before April of 1962, was a lawyer in private practice in Rochester, Minn., and during that period I had the privilege of serving on a State advisory committee to the Commission on Civil Rights for the State of Minnesota.

Prior to that, I had been a teacher of law in Durham, N.C.

The statement I have prepared, I would like to file with the committee and speak merely briefly from it in the time allotted to me.

(The full, prepared statement of Mr. Pemberton follows:)

**TESTIMONY OF AMERICAN CIVIL LIBERTIES UNION, NEW YORK, N.Y., ON PROPOSALS
TO EXTEND LIFE OF U.S. CIVIL RIGHTS COMMISSION, PRESENTED BY JOHN de J.
PEMBERTON, JR., EXECUTIVE DIRECTOR**

My name is John de J. Pemberton, Jr. I am the executive director of the American Civil Liberties Union, on whose behalf I appear here today. Before coming to the union in 1962, I was a practicing attorney in Rochester, Minn., for 11 years and before that an associate professor of law at Duke University. I was privileged to serve during my residence in Minnesota as a member of the State advisory commission to the U.S. Civil Rights Commission.

The American Civil Liberties Union enthusiastically supports proposals which will make the Commission on Civil Rights a permanent agency in the executive branch of the Government.

The scope and seriousness of the race relations problems that confront our country represent the leading domestic issue. It must be resolved promptly. Forceful and imaginative action is needed to break down the walls of discrimination that separate Negroes and other minority groups from first-class citizenship throughout the United States. The Federal Government must lead in the effort that will bring to the generations of Negroes now alive the enjoyment of American citizenship within their lifetime.

Among the tools that must be employed to achieve the goal of equal treatment are facts and education. Except for segregation's victims, those of us who are professionally engaged in civil liberties and civil rights work are perhaps more familiar with the nature and extent of discrimination than the public at large because we work with the problems every day. We do not know discrimination as well as its victims, but we know it well enough. But there are large portions of our citizens—mostly white to be sure—who know nothing about discrimination

except what they read; indeed, they know little about Negroes, so efficient, are the workings of discrimination.

But the glare of publicity to which race relations have been exposed in recent years has pricked the conscience of our society. And the work of the Civil Rights Commission has contributed richly to this educational advance. The Commission is no publicity hound. The hard facts of discrimination and the statistics that overwhelmingly show the unequal treatment accorded Negroes, have been gathered and presented in a scholarly and persuasive way by the Commission's hard working staff which, in terms of the size of the problems, is undermanned and underfinanced.

The work that the Commission has done in the few years of its existence has been extraordinary and invaluable. The information it has collected and distributed has for the first time brought together the statistics bearing on the extent of discrimination. Its exposition of law and policy has been reasoned; its recommendations imaginative.

To mention just a few of the Commission's publications is to demonstrate its usefulness. Its five-volume 1961 report, though only a fraction of its output, is by itself truly a monumental study of discrimination in voting, housing, employment, education, and the administration of criminal law. Each of the volumes examines the law in its field, the modes of discrimination, the depth of discrimination, and sets forth recommendations for eliminating discriminatory practices. The volume on justice, for example, gives a magnificent summary on jury discrimination practices with valuable statistical data. It also sets forth the law relating to systematic jury exclusion as handed down by the courts.

Some of its other publications, all of which provide the kind of educational and informational data that is absolutely necessary to understand the depth of discrimination, include a 1960 report on discrimination in public higher education, and its two-volume 1962 report on public school segregation in the South, North, and West. For those who believe the North does not practice discrimination or that the Commission is carrying on a vendetta against the South, let them read the fascinating narrative of the litigation over the New Rochelle school system contained in the North and West volume.

One other feature of the Civil Rights Commission that contributes further to its great educational role is its State advisory committees. Some are more active than others, but all of them provide a local base for studying racial discrimination in action and an additional educational channel; and most important, the involvement of local citizens in eradicating the evils of racial discrimination. This last point must be emphasized. The North Carolina committee, for example, wrote a 250-page report covering all phases of discrimination, and the Mississippi committee has recently published a report of stark terror in that State in the treatment of Negroes. These are truly important forward steps, by pointing out, to those officials and citizens responsible for denial of constitutional rights, that their own neighbors recognize the crime of racism and are putting their name and reputation behind efforts to end it. The psychological influence of such committees is enormous.

The racial conflicts that plague the country will not be solved in the next 2 years or the next 4 years. The conflict unfortunately is embedded too deeply. Thus, it is imperative that there be a permanent Government agency whose sole function is to be concerned with the investigation of denials of the right to vote, collection of information concerning the denial of the equal protection of the laws and policies of the Federal Government in the civil rights field. We urge as well that these duties be expanded to allow the Commission to serve as a clearing-house for information both to public agencies and private organizations.

It would be disastrous if the Commission were allowed to expire; it would be shameful if its mandate were extended for only a limited number of years. The American Civil Liberties Union urges that the Commission be made a permanent agency.

Mr. PEMBERTON. The American Civil Liberties Union enthusiastically supports the proposals to make the life of the Commission permanent, to make it a permanent agency of the executive branch.

We think this is desirable because our problems in civil rights and race relations are the Nation's No. 1 domestic problem at this time. It is its foremost domestic problem if only because of our national commitment and dedication to the proposition of the declaration of

1776 that all men are created equal and because of the universality of the problem in all sections of the country to which previous witnesses have attested. Accordingly, there is a need for Federal direction, Federal leadership in approaches to the solution of the problem.

I think the experience of the last decade has demonstrated the fact that information and education are major tools in the approach to this problem. They have demonstrated that and particularly the reports of this Commission have demonstrated the scope of ignorance among so many of us as to the extent of discrimination, of the consequences of discrimination and of the inhumanity that follows from it.

The public attention given the problem as a consequence of many events, primarily decisions of the courts, but also as a consequence of the reports of this Commission have pricked the conscience of the public and much has followed from that attention and that acceptance of the moral responsibility implicit in it.

But the Commission has not behaved as a publicity hound as, again, previous witnesses have testified. Its reports have been responsible, scholarly, its recommendations mature, its statistical information valuable and often filling a vacuum of other lack of prior information.

Reference has already been made to the five volume report for 1961 which touches on many areas of our life that had received inadequate attention before.

I would like to also call attention to the 1962 report on school segregation, particularly the volume dealing with public schools in the North and West.

I think one reading the very restrained, very balanced accounts and very detailed accounts of these controversies such as the one in New Rochelle, N.Y., would be impressed by the maturity that the Commission has brought to our consideration of these issues.

I would like to mention too, the importance of the 50 State advisory committees that served the Commission because of my personal experience on one of them.

Here again, the function of the Commission acting through State committees, committees of citizens, local to the geographical area being investigated, have thrown light on problems that the State's own citizens did not know existed.

Certainly, it was my experience as a member of one State advisory committee that it took the study and the activity and the hearings of that committee to bring home to me and to my fellow committee members and to the citizens who were looking over our shoulder as we conducted public hearings, the extent to which problems of discrimination and prejudice were universal and were not local to one section of the country and the extent to which some of the aspects such as housing discrimination were increasing in intensity in our area just at a time when we thought we were perhaps taking more mature attitudes toward discrimination.

I submit that 2 or 4 years more life for the Commission by itself will not do the whole job.

I do not think this is pessimistic. I think this is realism and the reasons that have been ably urged here already this morning for improving the capacity of the Commission to do the job by giving it a permanent tenure, suggest that permanent tenure is needed in this instance.

We support also the proposals to extend the duties of the Commission to serve as a clearinghouse for information and technical assistance to governmental agencies and to private organizations.

It would be disastrous if the Commission were allowed to expire. It would be shameful if its mandate were extended for only a limited time. The ACLU urges that the Commission be made a permanent agency.

Thank you.

Senator ERVIN. Do you consider that all of the recommendations of the Commission have been mature?

Mr. PEMBERTON. I think they have been very mature recommendations.

This does not require, I think, the Senate to agree with the recommendations that have been made.

Senator ERVIN. Well, can you personally approve of the recommendation the Commission made with respect to cutting off all Federal grants to the State of Mississippi until the State officials of Mississippi change their ways and conform to the ideals of the Commission?

Mr. PEMBERTON. I would suggest this is a mature proposal, not necessarily that it merits your agreement or mine.

The Commission asked the President in that particular recommendation to consider seriously whether legislation is appropriate to assure that Federal funds are not made available to any State which continues to refuse to abide by the Constitution and that the President explore the legal authority he possesses to withhold Federal funds.

Senator ERVIN. Do you not think that recommendation shows the conviction of the Commission that Federal grants to Mississippi should be cut off?

Mr. PEMBERTON. It shows the conviction of the Commission that Federal funds ought not to be used to perpetuate this discrimination.

Senator ERVIN. It showed specifically that the Commission was of the opinion that Federal funds should be cut off from the State of Mississippi until the officials of the State of Mississippi change their ways, to conform to the ideas of the Commission.

Mr. PEMBERTON. I have to confess, Mr. Chairman, that I have no insight as to what the Commission thought other than what they said, and I think they said they were very much concerned about this problem.

Senator ERVIN. Didn't they say in effect, that if Federal funds were granted to Mississippi that the other States were being compelled to subsidize the subversion of the Constitution by Mississippi officials?

Mr. PEMBERTON. They did say that, yes.

Senator ERVIN. Now, let me call your attention to some other points.

Mr. PEMBERTON. This is certainly true where Federal funds are employed to expand discrimination.

Senator ERVIN. Does not the Constitution of the United States say that all the legislative power of the Federal Government is vested in the Congress?

Mr. PEMBERTON. Mr. Chairman, I answer that question "Yes," without claiming to be a constitutional lawyer. I am a general practitioner.

Senator ERVIN. Well, I would say that you are a good constitutional lawyer also.

Now, would not an act of Congress which makes Federal grants and specifies the terms and conditions on which those grants shall be given, would not the cutting off of grants —

Mr. PEMBERTON (interposing). Yes; but I think it is to be assumed that the acts of Congress are within the meaning of the Constitution and would not intend the use of Federal funds to perpetuate patterns of discrimination.

Senator ERVIN. But does not the Constitution itself contemplate that the power to make decisions condemning people and imposing punishment upon people shall be done by the judiciary rather than the executive?

Mr. PEMBERTON. I think this is a separate question. I do not think the Commission said that they were determining that the punishment, that the time for punishment was ripe, or that punishment had been merited.

They said the Congress and President should consider seriously whether legislation is appropriate.

Senator ERVIN. It does not condemn the people of Mississippi and say, in effect, that they should not be allowed to have a project in Mississippi for a proposed trip to the moon?

Mr. PEMBERTON. Let me refer to the example the Commission used, that the Federal Aviation Agency failed to take cognizance of its obligation to the overriding constitutional demands when it granted \$2.5 million for the construction of an airport without questioning the airport's plan to build separate eating facilities.

This is directed to the use of Federal funds to perpetuate patterns of discrimination.

Senator ERVIN. Do you have the report which deplores the fact that any money is going from the Federal Government to the citizens of the State of Mississippi; where it refers specifically to officials ignoring the Constitution, and deplores the creation of an installation to be used in an attempt to travel to the moon?

Mr. PEMBERTON. There is a reference to the \$400 million rocket test engine following the statement:

Massive assistance to the economy of Mississippi has continued past the time when the State placed itself in direct defiance of the Constitution and Federal court orders.

Senator ERVIN. In other words, is not the Commission intimating that the Federal Government ought not to build a plant there because some of that money might wind up in the pockets of Mississippi?

Mr. PEMBERTON. If the application of it would tend to perpetuate patterns of discrimination, I would think yes. The method of employment —

Senator ERVIN. It says:

Massive assistance to the economy of Mississippi has continued past the time when the State placed itself in direct defiance of the Constitution and Federal court orders.

For example, the National Aeronautics and Space Agency is proceeding with the plans to build a \$400 million moon rocket test center in Pearl River and Hancock Counties, Miss.

Mr. PEMBERTON. It seems to me the Commission expresses a legitimate concern that such massive assistance will enlarge the discriminatory patterns of employment on Federal projects.

Senator ERVIN. Putting that in plain English, the Commission expresses the opinion that the Federal Government ought not to do anything which would contribute to the economy of Mississippi until Mississippi changes its ways and conducts itself as the Civil Rights Commission thinks it ought to.

Mr. PEMBERTON. I think the Chairman is entitled to place that interpretation on it. It is not my interpretation. I might be wrong.

I also have no other insight into what the Commission had in mind and what they said.

I think the Commission is legitimately concerned about the tendency of this project to increase discrimination in employment, in job opportunities, in sharing the benefits.

Senator ERVIN. And it advocates that the Federal Government not provide job opportunities in Mississippi until Mississippi conforms itself to the thoughts of the Commission. Is that not true?

Mr. PEMBERTON. This interpretation has been placed upon it by many others who are critical of this provision and I again do not think it is necessary for the Senate to agree with this recommendation.

Senator ERVIN. But do you not think the recommendation is susceptible of that interpretation?

Mr. PEMBERTON. Others have so interpreted it, and I do not think I would deny that one bit.

I think it is a mature recommendation because it deals with a major problem of the use of Federal funds to subvert the Constitution.

Senator ERVIN. I invite your attention to the first sentence on the top of page 5.

The financial benefits accruing to Mississippi and its citizens as a result of Federal programs are necessarily financed by American citizens throughout the Nation. The Commission deems it appropriate and desirable that the legislative and executive branches of the Federal Government inquire into the moral and legal considerations arising out of the situation where, in large measure, the lawless conduct and defiance of the Constitution by certain elements in one State are being subsidized by other States.

Do you not agree with me that those statements can be construed to mean that the Commission looks with disfavor upon the citizens of Mississippi receiving any benefits through Federal expenditures until the Government of Mississippi changes its ways?

Mr. PEMBERTON. I think, Mr. Chairman, I have already expressed my agreement with you that this is susceptible to that interpretation and I have chosen to suggest that it is also susceptible to the interpretation that the Commission is expressing deep concern about the use of Federal funds in areas not merely--in areas in which Mississippi is a prime example, but which occur elsewhere, where the effect of the employment of Federal funds, as in the airport example, is to perpetuate patterns of discrimination in violation of the 14th amendment.

Senator ERVIN. It does not exactly say that. It says "all funds should be withheld."

The intimation is that all funds from the Federal Government, and it even sets out the amount of \$650 million I believe, should be withheld until Mississippi officials, in the words of the Commission, "cease to subvert the Constitution."

Mr. PEMBERTON. I think I have already agreed with the chairman. He may place that interpretation on it.

Senator ERVIN. You realize that under this interpretation, which I give to the report and which you say is a possible interpretation, that the Commission was recommending that all grants to colleges of agriculture and mechanical arts, all grants for library services, all grants for vocational education, all payments to impacted school districts, all assistance for school construction, all grants for education of mentally retarded and all grants for defense education activities in Mississippi should be withheld until Mississippi reformed to suit the Commission.

Mr. PEMBERTON. I suspect it is probably true, Mr. Chairman, that each of the examples you have just recited involve employment of these funds in segregated institutions and I call the chairman's attention to the last paragraph of the Commission's statement or report in which it says:

The Commission does not want the people of Mississippi, either Negro or white, to lose benefits available to citizens of other States. Rather, its goal is that all citizens of the United States be assured the full enjoyment of the rights guaranteed by the Constitution.

It seems to me that the method in which Federal funds are employed might well be explored in terms of their capacity to attain this goal.

Senator ERVIN. And I invite your attention to page 1 where the Commission also says that:

Even children at the brink of starvation have been deprived of assistance by the callous and discriminatory acts of Mississippi officials administering Federal funds.

Does it not say that?

Mr. PEMBERTON. Yes, sir.

Senator ERVIN. And then, after saying that, it does not tell some of those children on the brink of starvation what to do. It proceeds to recommend that they cut off all of the aid to families with dependent children, all aid to the blind, all aid to the permanently and totally disabled, all aid granted for maternity and child welfare services, services to crippled children, and all child welfare services.

Mr. PEMBERTON. Mr. Chairman, you would agree that the employment of that aid to discriminate against Negro children would violate the 14th amendment and is it not tenable that the Commission found that only by employment of the threat of the power to withhold, that the President had an opportunity to deal with that evil?

Senator ERVIN. That is not exactly what the Commission says. I do not think any person can read this document and construe it from the four corners, as we lawyers say, without coming to the conclusion that the Commission was recommending that the President cut off all Federal aid to Mississippi for any purpose whatever.

Mr. PEMBERTON. Well, I very respectfully disagree with the chairman and suggest that the Commission's recommendations should be read literally as they appear on page 3, Nos. 1, 2, and 3.

We are discussing only No. 3.

Senator KEATING. I want to be recorded as in disagreement with the chairman, as one who can read this in a way which would not reach the conclusion the chairman has indicated.

It seems to me very clearly said here that the Congress should see what it can do to remedy the situation and then the President to explore the legal authority he already possesses to withhold Federal

funds and if in this program or that program or the next program he has the power to do it, he should exercise it.

It simply calls upon him to explore it and I say "Amen" to the proposition that both the legislative and executive branches of the Federal Government should inquire into the moral and legal considerations arising out of the situation where, in large measure, the lawless conduct of defiance of the Constitution by certain elements of one State are being subsidized by the other States.

I think it is better to say by the citizens of the other States, but I want to be recorded as one who disagrees with the interpretation which the Senator, our distinguished chairman, has put on the report.

I must say that that interpretation has been repeated over and over and over to the point where I congratulate the Senator from North Carolina and colleagues similarly situated, they have been able to convince some rather liberal journals that this is the interpretation on this document and which, in my judgment, is completely unjustified and some of the comments that have appeared in the press as a result of this reiteration of what I believe is a fallacious reasoning, has utterly amazed me.

I just do not see how they have been able to swallow such a fallacious line of reasoning. However, again I say the Senator has been very successful in this respect as he has in many others. But I certainly would not want to sit here and say that I agreed to any such interpretation of this document.

Senator ERVIN. I disagree with my good friend from New York. But I would be delighted to receive enlightenment from him, and I would appreciate it if he will point out anything in this statement that makes any distinction between Federal aid for one purpose and for others.

Senator KEATING. They have not gone into the details of every Federal aid program, but that is the only way I believe it is reasonable to read the statements they have made.

Mr. PEMBERTON. If it would be any assurance to the chairman, although I said I did not want to make this issue of the extension of the life of the Commission and of its responsibilities dependent upon our agreement with each of its proposals, I would certainly assure the chairman that I would disassociate myself at least from any proposal that any State be punished by nonjudicial action or all of the people of the State be punished by nonjudicial action by the act of one administration or one set of officials.

Senator ERVIN. Do you think that the President has the power to step in and cut off the appropriation made by Congress when Congress has proscribed the conditions upon which the appropriation has been made? Do you think he can add different specifications from those added by Congress?

Mr. PEMBERTON. Again, I would disassociate myself from the role of constitutional lawyer and associate myself with the recommendation of the Commission that the President ought to explore his power to do that sort of thing.

Senator ERVIN. I am glad my good friend from New York has said that other people have also put a different interpretation on this report.

As a matter of fact, that is clear from an editorial in the Lawrence Daily Journal of Lawrence, Kans., which quotes a statement of the President, showing that the President took the same position I do. The editorial says:

President Kennedy, who sometimes has seemed intensely eager to assume new powers, recently surprised some of his critics. He flatly rejected a proposal that he consider withholding Federal funds from Mississippi to force that State to protect the rights of its Negro citizens. He said:

"I don't have the power to cut off aid in a general way as proposed by the Civil Rights Commission, and I would think it would probably be unwise to give the President of the United States that kind of power * * *."

Kennedy added that to use such power in one State might lead to using it in other States for other reasons.

Senator KEATING. I am afraid the President read some other information other than the Commission's reports.

Senator ERVIN. He and I both read it alike, and he is an intelligent man. He has a good command of the English language.

Senator KEATING. He is so occupied with his many duties one could understand how he might not be able to read every sentence in this report which seems very clear to me. I say that with some hesitation because of the widespread misinterpretation that has been put on the report of this Commission.

Dean Griswold is going to be here tomorrow and we will have an opportunity to ask him what he meant when he wrote those words, and I am sure that that will be helpful and I think we ought to send his testimony down to the President and perhaps the President would take a different view if he understood fully the holdings of the Commission.

I do not know of any lawyer who would ever claim that because a library was not opened to the Negroes in Mississippi that that gave them authority to cut off funds under the Hill-Burton Act.

Each program obviously must be taken up by itself, and I see nothing whatever in this report which is at variance with it.

Senator ERVIN. I assure the Senator that I will be glad to consider anything specific he will point out in that report which makes a distinction between different types of funds.

Just to go back a little here, I am sorry you have to leave, because I was going to read one more example of the interpretation placed on this report by one of the very right wing newspapers, the Chicago Tribune of April 21, 1963.

Senator KEATING. You do not have to quote the Chicago Tribune. You can quote the Washington Post, the Washington Star, the New York Times, many other editorials which have really been quite amazing to me in their language.

I have great respect for all of those fine periodicals, and journals of opinion and a great many other fine papers all over the country. But they should read the report.

Senator ERVIN. It is so rare that they agree with me on anything, when they do agree with me, both of us must be right.

Now here is one from the Chicago Tribune of Sunday, April 21, 1963:

President Kennedy has said quite properly that he cannot accept the unanimous suggestion of his Civil Rights Commission that he consider withholding Federal payment to the State of Mississippi.

Then the Los Angeles Times of Sunday, April 21, 1963, says this about it:

If the President of the United States was suffered to follow the wide open ways that the Civil Rights Commission showed to him, our kind of balance in constitutional government would lose its meaning. At worst, its decision might not be based on constitutional principles. They could be based on pure raw political considerations.

Then the New York Times of Friday, April 19, 1963, says:

The Civil Rights Commission's recommendation that President Kennedy consider withholding Federal funds from Mississippi as punishment for the mistreatment of Negroes amounts to a proposal to read that State out of the Union. We can think of no suggestion less calculated to promote civilized race relations or to cool the inflamed passions that erupted in the Civil War. The cutting off of Federal funds as a corrective device, is not only wrong in principle, but it would bear most onerously on the State's poorest citizens, including the very Negroes it is designed to protect * * *.

Even if this were not so, the use of pocketbook pressure, instead of legal process to compel Mississippi to respect the Constitution offends the concept of sound Federal-State relationships built on law.

I wonder if you can agree with the last statement?

Mr. PEMBERTON. Mr. Chairman, I would agree with the Times' criticism if I agreed with its interpretation.

It seems to me the one thing we have established in this conversation is that the Commission did not achieve the high standard of English grammar it normally does achieve and we at least disagree as do some other commentators as to the proper interpretation. I too, have been shocked by the extent of editorial interpretations that have agreed with your interpretation.

Senator ERVIN. Are you suggesting in your last statement, in defense of the Commission, that the Commission did not say what it meant or what you think it ought to have meant?

Mr. PEMBERTON. I think that the New York Times did not find out what the Commission meant, but maybe I am wrong.

The committee is going to find out tomorrow by interrogating the authors of this statement.

Meanwhile, I adhere to my simple proposition which is that the Commission's recommendations have been mature and important.

Senator ERVIN. Your organization has believed throughout the years that all people should be dealt with in accordance with the dictates of due process of law. Is that not true?

Mr. PEMBERTON. This, Mr. Chairman, is why I thought for awhile that it was not necessary for me to assure you that we could not stand still for the proposition that some people would be punished for offenses that other committed and by administrative procedure.

Senator ERVIN. I would construe that that is what the closing paragraph says.

Mr. PEMBERTON. Of the New York Times?

Senator ERVIN. Of the New York Times which says:

Even if this were not so, the use of pocketbook pressure instead of legal process to compel Mississippi to respect the Constitution offends the concept of sound, Federal-State relationships built on law.

Mr. PEMBERTON. But at this point, Mr. Chairman, I would disagree that this is to be viewed only as a form of punishment.

If in actual fact, based on determinations made by the administrator of any program, the fund that he is administering is being spent in

violation of the Constitution, it would seem to me that his constitutional obligation would require him to do something to change that.

Senator ERVIN. Do you not think it would be more in harmony with due process of law for the party, the President, or anybody else, before taking such action, to give notice and an opportunity to be heard and thus to proceed in a legal manner?

Mr. PEMBERTON. Of course, it should be done after due process of law and again, all the Commission has recommended is that the President explore this matter.

It has not, in my opinion, ruled out due process of law.

Again, I would not support it if it did rule out due process of law.

Senator ERVIN. My opinion on these matters is that if anybody in Mississippi, in any office in Mississippi, has violated anyone's constitutional or legal rights, he should be prosecuted in the courts in accordance with due process of law. Any punishment that might be meted out would be meted out by the court according to law, and should be meted out on the guilty, not upon the innocent. This recommendation in my judgment—others can argue, quibble with me about it as they see fit—but it recommends that because of alleged offenses committed by some State or local officials in Mississippi, all old-age assistance should be taken away from the old people in Mississippi, who had been dependent on it for shelter, food and clothing. It recommends that aid for dependent children be taken away—and the figures show that of the people who would be affected, more than 70 percent of them, are Negroes. It also recommends taking away grants for the elimination of venereal diseases; grants for the elimination of pollution in the rivers of Mississippi; grants for research in cancer; grants to control tuberculosis; and so I respectfully have to disagree with you. I don't think it is a mature recommendation. I think it was hastily phrased, and I think that this report is a justification for the abolition of the Commission.

Out of fairness I will say that this recommendation is out of harmony with virtually every recommendation ever participated in by Dr. Robert Rankin of Duke University and Dean Story of Texas. Do you wish to make any comment?

Mr. PEMBERTON. I want to comment, if it pleases the chairman, that there is quite a lot of difference in terms of what the requirements of due process of law are between a determination of how the Government's money, the taxpayer's money must be spent or may be spent, and who is going to be fined or imprisoned as punishment for an offense.

The chairman has indicated that he would desire to see every violator of the Constitution, in law enforcement or otherwise, punished for those violations. One of the most important contributions the Commission has made, has been to make us aware through its reports, of the extent of patterns of such violation which we have not dealt with as a nation. But when it comes to the appropriation of Federal funds, if I were not a veteran of World War II, I would not be entitled to Federal benefits accorded the veterans. This would not be a punishment of me, for failing to serve in the war. This would be the terms of the appropriation.

Senator ERVIN. That is exactly it.

Mr. PEMBERTON. And the Constitution is surely an implied term of every appropriation that this Congress makes.

Senator ERVIN. And Congress has passed a law.

Mr. PEMBERTON. Exactly.

Senator ERVIN. Placing upon the Veterans' Administration, the duty and the power of determining who is eligible.

Mr. PEMBERTON. But not giving me a right to trial, if I disagree with the Veterans' Administration determination.

Senator ERVIN. I know, but there is quite a difference between a man who does not come within the purview of an Act of Congress, as in your illustration, and, on the other hand, all these dependent children, all of these people that are drawing old-age assistance; because every one of them comes within the terms of the act of Congress.

Mr. PEMBERTON. But Mr. Chairman, surely the Congress did not intend by its act to give a grant-in-aid to a State that would administer it discriminatorily. We would not impugn that intention to the Congress and so the Federal officer turning those funds over to the State would not have the authority to grant it, to turn over the funds, if in fact, it was being administered discriminatorily.

Senator ERVIN. Does not it say that the funds are given for the benefit of the people who qualify under these acts of Congress?

Mr. PEMBERTON. I am speaking now of grant-in-aid programs.

Senator ERVIN. This recommendation, as I see it, is designed to punish the people who are entitled to these benefits under the express provisions of the acts of Congress in order to coerce public officials to do as the Commission thinks they should.

Mr. PEMBERTON. The chairman continues to feel that ineligibility for Federal funds is some form of punishment and the simple point I am making is that I don't think that is a form of punishment within the meaning of our standards of due process, any more than a veteran, seeking veteran's aid for which he does not qualify, is being punished. He just does not come within the terms of the act.

Senator ERVIN. I don't think your illustration is comparable because the law itself specifies who is entitled to old-age assistance.

Mr. PEMBERTON. And the law specifies who is entitled to veteran's aid.

Senator ERVIN. The law specifies who is entitled to aid for dependent children; and the law that makes these people eligible is quite different from the law that says a nonveteran is not entitled to veteran's aid.

I wish to call your attention to this: Recommendation No. 3, which appears on page 151 of book IV on Housing of the 1961 report.

The majority of the Commission recommended that the Federal Government, either by executive or congressional action, take appropriate measures to require all financial institutions engaged in any form of loan business, that are supervised by Federal agencies, to conduct such business on a nondiscriminatory basis, and to direct all Federal agencies to devise reasonable and effective implementing procedures.

Don't you think that would be an intolerable extension of Federal power if carried out?

Mr. PEMBERTON. Again, Mr. Chairman, I think this follows from the Federal investment and the Federal credit—each of these institutions is enjoying some benefit in terms of its credit from a Federal insurance program and from the Federal regulation program that gives the depositor in that institution, a sense of assurance that attracts his deposit. It again would seem to me to be intolerable, that this Fed-

eral investment in the banking business, might be employed to discriminate against some of our citizens on an irrational basis, namely, color.

Senator ERVIN. Don't you agree that this would cover national banks?

Mr. PEMBERTON. Yes.

Senator ERVIN. It would cover State banks?

Mr. PEMBERTON. Regulated State banks.

Senator ERVIN. It would cover State banks that are supervised by Federal agencies.

Mr. PEMBERTON. By Federal authority.

Senator ERVIN. Any bank that has Federal insurance on bank deposits.

Mr. PEMBERTON. Certainly, and think of the contribution this insurance has made to the credit of that bank.

Senator ERVIN. This would cover virtually every commercial finance institution located in any township, anywhere in the United States, would it not?

Mr. PEMBERTON. Is it really harmful that these institutions should not have to discriminate? Should not be permitted to discriminate?

Senator ERVIN. I think it would be very harmful if the Federal Government, through any agency, undertook to review all the loan applications made by all of the commercial institutions in the United States, to see whether, in refusing to make a loan to any person of the colored race, they had practiced racial discrimination.

Mr. PEMBERTON. Again, the Commission's recommendation is that the Government take appropriate measures. It does not say review every loan.

Senator ERVIN. If that were carried out, would it not mean conferring power upon Federal agencies, to make a review in every case where a commercial bank refused to loan money on a mortgage to a Negro, to see whether it was based on sound banking grounds or whether it was based on racial discrimination?

Mr. PEMBERTON. The Government does not even review that many of our tax returns. It does it on the basis of spot checks, Mr. Chairman.

Senator ERVIN. You would not want a law that operates just in a few cases.

Mr. PEMBERTON. Laws are administered on the assumption that most citizens obey the law.

Senator ERVIN. Suppose you come to the question I am asking: if the recommendation was carried out, would it not confer upon the Federal Government the power to investigate every act of a commercial lending institution, which resulted in the refusal of a mortgage loan to a Negro for housing purposes?

Mr. PEMBERTON. I apologize. You said, confer the power. I agree, it would confer the power. This seems to me to be a natural consequence of the Federal investment in the thing.

Senator ERVIN. Well, to my mind, it would be an intolerable situation for every banking institution in the United States, every building and loan, to have a Federal agency staffed by people who probably know nothing about banking, with the power to make reviews of all loans and refusals to make loans?

Mr. PEMBERTON. Mr. Chairman, I suggest that the difference between this turns on a set of values and if that would be intolerable

to you, it would seem to me to be intolerable that any one of our citizens by reason of an irrelevancy, such as the color of his skin, might find that he was discriminated against by a commercial institution that enjoyed some of its prestige, some of its attractiveness to depositors, from the involvement of his Federal Government in the regulation and the insuring of that institution.

Which is more important, Mr. Chairman? That is all.

Senator ERVIN. All of the funds which are in these institutions are put there by private individuals.

Mr. PEMBERTON. And insured by my credit as a taxpayer, and your credit as a taxpayer.

Senator ERVIN. Are you in favor of the Federal Government assuming the power to determine what loans people should make of their own money?

Mr. PEMBERTON. I am assuming that the Federal Government ought to have the power to follow its dollar and its credit to be sure that citizens are not discriminated against by reason of it.

Senator ERVIN. How many employees of the Federal Government would you have to add, to do that?

Mr. PEMBERTON. Well now, we are getting away from the chairman's power question now, into the question of practical administration of the proposition.

Senator ERVIN. I am inquiring about the practicality of the Federal Government, carrying into effect this recommendation of the Commission: that the Federal Government expand its power to such an extent, that it can supervise and control what loans our institutions can make of their own money.

Mr. PEMBERTON. And now, I simply refer again to my analogy to the operations of the Internal Revenue Service. We can parade a terrific parade of horrors as to the number of employees it would be necessary to have, to police all income tax returns if we assume that all citizens were going to cheat.

I assume these banks are not going to cheat.

Senator ERVIN. Don't you think that a legal system must be based on the premise that the laws apply equally to everybody in like circumstances?

Mr. PEMBERTON. They certainly must.

I think this is what we are talking about in talking about discrimination.

Senator ERVIN. Do you think the Federal Government would do its duty if it just supervised a few institutions under this proposed law, and ignored the rest?

Mr. PEMBERTON. Do we deviate from that principle by not auditing every person's income tax return? I don't think so. The Service only spot checks income tax returns.

Senator ERVIN. Then you say that it would be all right for the Federal Government to assume this power?

Mr. PEMBERTON. And do what it needs.

Senator ERVIN. But the Government should not exercise it except occasionally?

Mr. PEMBERTON. On the contrary, Mr. Chairman, it should do what it needs to do to make it effective but I assume that American citizens tend to be law abiding, and bankers are included among them, as are taxpayers.

Senator ERVIN. I am glad to note that Dr. Rankin and Dean Story agree with me. I would like to read into the record what Dean Story says, which I think is not only a sound comment on this particular recommendation, but also on many other recommendations of the Commission.

Dean Story says, and I read from pages 151, 152, and 153 of Report No. 4, "Housing" (1961) :

While I am fully agreed that it is not in keeping with American principles that a person be denied a housing mortgage loan solely on the basis of his race, religion, or national origin, I am, nevertheless, very much opposed to further intervention by the Federal Government into the affairs and policies of private financial institutions. It is important to recognize that under democratic capitalism there must be a realm of institutional autonomy. Private financial institutions, even where their activities are in part already regulated by the Federal Government, are primarily business institutions and not institutions for social reform. The first duty of officials of such organizations in lending money is to make sure an investment is prudent, so as to protect the funds entrusted to them. There are a great many factors involved in every mortgage loan. Private institutions will lend their money on a nondiscriminatory basis when it is in their obvious economic self-interest. Even the most conservative banker lends when the risk seems minimal and the return adequate.

Before Federal power is extended, even when that power admittedly exists, it should be determined whether or not such additional centralization is desirable. What constitutes the appropriate sphere of governmental intervention in private institutional financial policies may be a relative matter, but some separation must be kept between political, social, and economic affairs. Every increase in Federal supervision of the economic life of the Nation for the purpose of achieving certain specific social objectives automatically diminishes the function that the free competitive market discharges under democratic capitalism. In the long run, this can lead only to autocracy.

Recommendations such as this, for increasing Federal control assume a totally powerful National Government with unending authority to intervene in all private affairs among men, and to control and adjust property relationships in accordance with the judgment of Government personnel. It is at this level that a more serious obvious weakness arises, for political employees are seldom absolutely objective. It is impossible to keep Federal intervention from becoming an institutionalization of special privilege for political pressure groups. This must lead eventually not to greater human freedom but to ever-diminishing freedom.

Therefore, a great deal of caution is needed before succumbing to the politically tempting suggestion of resorting to the Federal Government for increased control. Reliance on the Federal Government for the solution of all problems of discrimination can bring about only a weakening of confidence in the capacity of the institutions of a free economy to serve democratic values. I am firmly of the belief that in the majority of instances a free economy is better able than the Federal Government to work out fairly the problem of discrimination in mortgage loans. This, in turn, will halt the tendency to shrink freedom of private enterprise to smaller dimensions.

The issue here is much more than the technical problem of devising new controls to deal with financing minority housing. It is the issue of freedom versus authority. The success of a democratic free enterprise economy depends as much on what the Federal Government does not do, or does not have to do, as on what it does. Successful regulation must be limited to issues that cannot be dealt with by voluntary association and, even then, only after the imperative need for more extensive Federal intervention into private affairs has been established. This is a slow process requiring considerable restraint, especially in times of emergency of rapid change.

This is the process, however, by which our laws and institutions have developed. That they have fallen short of perfection may be obvious. That they have lagged at times, may be apparent. But the results, in the long run, have justified the slower evolution of the democratic process. Hence, I am opposed to the creation of further Federal controls to supervise private financial institutions, as proposed in the recommendation III.

Now, I think that is a very intelligent observation. It is one of the relatively few very wise pronouncements that appear in this book.

Mr. PEMBERTON. Mr. Chairman, I would like to associate myself with your statement that this is an intelligent observation and use it in support of my argument that this has been a commission that has approached issues intelligently and with mature consideration.

I think that if the recommendation to which Dean Story had been addressing himself had not deserved such mature criticism though he disagreed with it, it would not have received such an intelligent statement from him, and, in fact, I think the recommendation deserves not the committee's agreement necessarily but respect as a mature recommendation based upon serious study of how severe the problem is that we are dealing with.

The Commissioners themselves disagreed, as Dean Story's statement indicates, and the Senate certainly is entitled to disagree with it, without that bearing upon the business we are here about this morning, which is my recommendation to you that the Commission's life ought to be extended. This business is so important.

Senator ERVIN. This illustrates, in my opinion, one of the great mistakes we are making in this particular field. I think we have the finest system of government ever devised in the mind of man, and most of the proposals made by this Commission, and most of the proposals made by those who believe that laws can create a more abundant life, are proposals which require that all citizens be robbed by law of some of their most basic rights on the theory that the minority cannot get rights without robbing the majority of rights.

My own opinion is that you have to treat all Americans equally; and you cannot promote the cause of a minority by robbing all Americans of rights that have always been considered basic.

Minority rights can be assured in some other way.

You are not arguing that point, so I am not.

Mr. PEMBERTON. Mr. Chairman, fair enough. Perhaps it would be considerate of the time of the Senate if we did drop it.

Senator BAYH. I would like to make an observation and I would like to ask Mr. Pemberton's opinion on this matter.

I think that the basic issue before us is whether or not we need a body like the Civil Rights Commission to investigate and disclose factual situations which exist. There can be no question that this body does not have nor is it suggested that it have, lawmaking powers. Any suggestions it makes are subject to interpretation, not only by all of us present and in the media to which we made reference, but also Members of Congress. There is no suggestion, in any way, shape, or form, that it will ever be law without going through the regular legislative process.

I gather that you are in favor of a permanent agency because basic human rights are of great importance, and because you feel this is going to be a longtime proposition.

Mr. PEMBERTON. That is right.

Senator BAYH. You feel that, at a time in the future—I don't want to put words in your mouth—let me phrase the question differently.

At a time in the future, if we in this country, ever get to a place—and I hope we will—where basic human rights are protected by other means, do you feel that there would be a continued need for this type of a commission?

Mr. PEMBERTON. No. I would then associate myself with you in suggesting that the life of the Commission could expire and with Senator Saltonstall's suggestion that the Congress would not appropriate money for performing a useless function.

This does not seem realistic at the present.

Senator BAYH. Looking at what was said yesterday, I think we will have this Commission so long as there is a problem, whether a racial, religious, or national background problem.

Looking at Senate bill 1117, do you feel that the authority contained therein, giving additional subpoena power to the Commission, would allow them greater opportunity to perform the duties to which they have been assigned?

Mr. PEMBERTON. I confess, sir, that I am not sure that I am qualified to answer that. I have not given it sufficient consideration as to whether in fact the existing subpoena powers have been inadequate; or the existing investigative powers.

Senator BAYH. Do you have any comment concerning the increased compensation which is provided for in S. 1117, as far as members of the Commission?

Mr. PEMBERTON. It would be hard to argue that the existing compensation has not been enough to enable the Commission to attract able men. It has attracted some of the ablest. But I think we ought to be fair with them and I would concur in the Congress judgment, if it adopted that amendment.

Senator BAYH. Fortunately or unfortunately, you have to deal with specifics. I think you are right. We have topnotch men on the committee today.

Mr. PEMBERTON. Right. This to me has not merited the attention that the question of whether the extension of the life of the Commission be granted, has merited, and I am not expressing an opinion on that. I hope the Congress will be fair with them.

Senator BAYH. Give it some thought, and let us know at a later date what you think about the subpoena powers.

Mr. PEMBERTON. I am embarrassed that I am not expressing an opinion on that.

Senator BAYH. You need not be embarrassed. Let us know what you think at a later date.

Mr. PEMBERTON. Right. I will do that, Senator.

Senator ERVIN. I want to ask one more question about this loan.

Mr. PEMBERTON. Yes, sir.

Senator ERVIN. Don't you think it has always been the law that before you can convict a man of anything, you must have a corpus delicti. In other words, you cannot convict a man of murder without showing there is a corpse somewhere. And you cannot convict a man of larceny without showing some property has been taken away.

Now, this question of imbuing the Federal Government with the power to determine whether a refusal to make a loan is based on racial discrimination—doesn't this invade the innermost precincts of a man's mind or the minds of the board of directors of the institution?

Mr. PEMBERTON. Well, in the application of much law, we have to inquire into the intent of the actor; whether it be a defendant in a criminal proceeding or a defendant in a civil proceeding. His intent may be governing. We don't dissect brain cells to do that. We observe the objective evidence.

Senator ERVIN. Yes, but he has been guilty of some external conduct, which indicates his intention.

Now, here is a bank director, who turned down a loan.

Mr. PEMBERTON. What is the difference? The one fellow has turned down a loan. The other fellow has turned up the wrong street with his car.

Senator ERVIN. One man has done something which it is perfectly lawful for him to do, provided he does not have a wrongful intent in his mind.

Mr. PEMBERTON. And so has the other.

Senator ERVIN. So you are going to let the Federal Government make a determination, based upon the hidden motives of a man's mind—the board of director's mind.

Mr. PEMBERTON. The suggestion, Senator, that this is unusual in the law, just is not so. There are homicides that are perfectly lawful without an improper intent.

Senator ERVIN. Yes, but before you can convict a man of homicide, you have to have a corpse, which evidently died by violent means.

Mr. PEMBERTON. It is still true, Senator, that it is perfectly lawful to kill in self-defense, and a state of mind is determinative whether the purpose of the killing was self-defense.

Senator ERVIN. Yes, but you can determine that largely by the external events which occurred at the time of the homicide. It is not a question of discrimination—something hidden entirely in the man's mind.

Mr. PEMBERTON. This is precisely what I am saying; about determining discrimination in the administration of loans, or under fair employment labor practices law, or fair housing laws, discrimination in the administration of an employment policy or the sale of a house. It is done by objective evidence. There is no way to get into the mind of a man. You have to look at his conduct and determine what his intent was, and every jury does that, in a case where it is relevant.

Senator ERVIN. So in the case of the board of directors of a financial institution, which is charged with the responsibility of investigating investments of depositors' money, you would let the Federal Government, who might or might not have any knowledge whatever of banking, come in and invade the directors' minds and determine their motives. You would have the Federal Government investigate their motives when they refused to approve a loan.

Mr. PEMBERTON. Mr. Chairman, in the first place, I would not necessarily do so. I did not say that our evaluation of the Commission depended upon your agreement or mine with recommendation III of the housing recommendation.

I said this was a mature recommendation, and I said so because the problems of depriving a Negro or in my part of the country, my former home, Minnesota, an Indian, or another minority group member, of an opportunity to enjoy the right to own a home, one of the most important of the privileges we enjoy as an American citizen, because of discrimination in the sale of a house, or the discrimination in the financing of it, is so important that this particular recommendation of the Commission merits serious consideration. This is all I said.

Senator ERVIN. Then you don't go quite so far as to say that you would favor allowing the Federal Government to compel a financial institution to make a loan, merely because a man from the Federal

Government found that its personnel had hidden motives which prompted them to practice discrimination in processing the loan?

Mr. PEMBERTON. No, but I said, Mr. Chairman, that I did not consider this as alarming a proposal as the chairman seems to think it is. It is no more alarming than bank examiners questioning a loan that went to a relative of a bank officer, or may otherwise have been made from improper motives. They are already in the business of examining the motives of bankers when they regulate banks and there is nothing particularly radical about this proposal.

Senator ERVIN. No, they do not examine the motives. I represent the paupers on a board of directors of a bank. The bank examines the question of whether a loan is solvent or insolvent.

Well, no further on this, except so say, from my own observation, that I think it would be intolerable and a wholly unjustifiable extension of Federal power, to implement this recommendation of four out of the six Commissioners, that the Federal Government should assume the power to compel people to make loans they do not want to make, to people they did not want to make them to.

Mr. PEMBERTON. I respect the Senator's opinion. I respectfully disagree that it would be intolerable in the face of the evil that is so intolerable with which it deals.

Senator ERVIN. In other words, you would favor robbing people of the right to make loans to whom they please with their own money, on the theory that that might be the only way that another person could prosper. In other words, rob one man of rights in order to confer unprecedented rights on another.

Mr. PEMBERTON. Mr. Chairman, if I were a banker in Durham, N.C., where I used to live, I would now have the right to refuse a loan or any financial dealings with a man just because he was a Negro and I did not like Negroes. This would be my right, as of the moment. Or, if I were a Negro in Durham, N.C., I might lack the opportunity at all, to get adequate financing so that I could own a home.

I cannot agree that my right to discriminate against that Negro is equal in importance, under our Constitution, to his right to enjoy what America has to offer its citizens. One right is much bigger than the other.

Senator ERVIN. I have a lot of Negro constituents in Durham who did not appear before Congress attempting to legislate themselves into a more abundant life. They went to work and built a fine bank there. It does well. It recently expanded with a branch in Charlotte. The North Carolina Mutual Insurance Co. in Durham, is a wonderful insurance company, and I think we ought to point to that example. Those who think that people who make successes like that, must rely on acts of Congress, are making a serious mistake. I think success can be and must be earned by individual enterprise.

Mr. PEMBERTON. Mr. Chairman, I very much agree with your evaluation of those two institutions. I think Mr. Spaulding and Mr. Wheeler are important businessmen in that community. I stick to my illustration merely as a hypothetical. I do think the rights we are dealing with here are terribly important rights.

Senator ERVIN. As Mr. Spaulding is quoted as saying, on this subject:

If a man wants a drink of water from a cool spring on the mountaintop, he is going to have to climb on the top of the mountain to get it.

I enjoyed my interchange with you.

Mr. PEMBERTON. I am grateful to you.

Senator ERVIN. I have a very high respect for the work which your organization does in the cause of justice for all people, especially people of some unpopular classes.

Mr. PEMBERTON. Thank you, Senator. I am very grateful to you.

Mr. SPEISER. May I just make one comment, Mr. Chairman? I hope that the determination of whether the Civil Rights Commission life should be extended is not made on the basis of agreement with one or a number of its recommendations. The Senate of the United States has, in the past, passed some bad laws; it has even passed some unconstitutional laws, but I don't think anyone is suggesting that the Senate be abolished.

Senator ERVIN. I would agree with you on that, but I think it is costing about a million dollars a year for us to get recommendations from the Civil Rights Commission, and I say, with all due deference to everybody concerned, that every recommendation they have made, has been made previously to the creation of the Commission by some other organization which has also adopted the theory that men can legislate their way into the economic and social and political Utopia. So there is nothing original in any of their recommendations that I have seen. Some of them are recommendations which either run in the face of the Constitution or contemplate what I consider to be an intolerable expansion of Federal power into an area where the Government ought not interfere. I think a million dollars for that purpose is unnecessary when we have the Civil Rights Division in the Department of Justice doing the same kind of work, and we have the congressional committees doing the same kind of work.

Mr. SPEISER. I don't think the Civil Rights Division does the same kind of work and I don't think there is any other governmental agency that has done the work that the Civil Rights Commission has done in the past.

Thank you.

Mr. CREECH. Mr. Pemberton, I would like to ask you this question.

You indicated to Senator Bayh that you feel that it is desirable to have an agency to investigate basic human rights. Mr. Speiser has indicated the same thing. And he said that the Civil Rights Division does not do this work at this time. Now, I should like to ask you gentlemen, from your study of the Commission and of the Civil Rights Division, what functions do you see that the Commission has that the Civil Rights Division could not perform?

Mr. SPEISER. Well, first of all, the hearings that have been held by the Civil Rights Commission have been for the purpose of collecting facts and have to some extent performed the functions of congressional committees, but they have been able to give an emphasis to it, and focus on these problems in a way that congressional committees have not been able to.

The Civil Rights Division is a law-enforcement agency; it does not have that function; and I think probably it would be improper for it, as a Division of the Department of Justice, to have a function of that kind.

Mr. CREECH. Now, Mr. Speiser, at the time that the Attorney General appeared before the Congress to justify the appropriations for the

Civil Rights Division, he said that, in addition to the enforcement of the civil rights statutes, and I am quoting from the Attorney General's statement:

It will undertake a program of liaison and consultation with law-enforcement agencies and other officials of States in order to promote understanding of the problems and to place State and Federal responsibilities in their proper perspective.

Commenting on this, Mr. White said:

At this time we have in mind the great importance of the collection of far greater information, both factual and legal, in the whole civil rights area. We think without such activity, we cannot do the job.

So apparently, the Civil Rights Division feels that, as part of its work, it must do a certain amount of information collecting, and the Attorney General went on to say:

In the field of civil rights, the Department's basic policy is to seek effective guarantees and action from local officials and civic leaders voluntarily, without court action, when investigation has disclosed evidence of civil rights violations.

The Attorney General can, and has on numerous occasions, appointed groups to hold meetings, and to conduct research and make recommendations to him. So I don't understand exactly what you have in mind when you say that the Commission is performing rather unique functions which could not be performed by the Civil Rights Division.

Mr. SPEISER. The Division has not held public hearings of the kind that the Civil Rights Commission has held, and I even, with the statement of the former Deputy Attorney General, I don't think that he would feel this would be a proper function for the Civil Rights Division, to hold hearings of that kind. The hearings have performed a useful function. They have been the basis for collecting facts, just as have the hearings of this subcommittee. The Commission has gone beyond that, in making recommendations, as an independent agency, which I think has a value in and of itself.

The recommendations that have generally been made by the Civil Rights Division, go through the Internal mechanisms of the Department of Justice, and are not presented as those of an independent agency. I think there is a value of an independent governmental agency making recommendations, without going through the channels, so to speak, that exist within a Government department.

Now, I recognize that there have been some ad hoc committees, which have been established by the Attorney General. The most recent one, for example, is Professor Allen's committee on providing representation for the poor and indigent in Federal criminal cases. Now, this was done on an ad hoc basis it had limited resources; it had very little funds; it had hardly any staff. The fact that this committee was able to operate at all and come in with the recommendation and report that it did, was due more to the fact that it was composed of men of good will, public-spirited citizens, who expended a great deal of time and effort for little or no compensation.

I don't think that we should have to impose on men in that position in order to explore the fields that we feel are necessary within our society.

Mr. CREECH. Mr. Speiser, you indicated that you feel there is additional value in independent agencies making recommendations, and

you also indicated that you feel it is an undue imposition on private citizens to serve on various ad hoc committees without receiving compensation. The members of the Civil Rights Commission only receive day-to-day compensatory fees, so there is no reason why, if the Attorney General wanted to, members of any committee he appointed could not be so compensated. Is that correct?

Mr. SPEISER. I was not concerned about the compensation. I was concerned about the permanency of having a regular staff working on something, so that it is not such an imposition; so that you don't have the problem of organization that is done on an ad hoc basis. It seems to me that the Commission itself, in its permanency, has established its worthwhileness on the basis of its hearings, on the basis of the fact that it has made recommendations, and has made studies and collected information that was not available before.

Mr. PEMBERTON. Mr. Creech, you emphasized—in reading Mr. White's statement—the relationship between the Department of Justice personnel and the law enforcement agencies of the several States and localities, and it would seem to me this would underscore the importance of the independence of the Commission serving its quite different function, which is not merely to establish good liaison between Federal law enforcement officers and local law enforcement officers, but to tell us what is going on in the country as a consequence.

Mr. CREECH. That is one of the powers it would have; but the bills provide for the—

Mr. PEMBERTON. Technical assistance.

Mr. CREECH. Clearinghouse operation offering technical assistance. We don't know exactly what this envisages but presumably, it is the type of function performed by the Division.

Mr. PEMBERTON. Well, it might very well include this.

Mr. CREECH. I gather from your statement you feel this would be undesirable.

Mr. PEMBERTON. Well, you might well prefer to put that in the Justice Department, but it also might be something quite different from what Mr. White's statement envisioned.

There is inherently a need for this relationship between law enforcement officers at the different levels of government. There still may be a function performed by an independent agency, not now bogged down in the total problems of law enforcement, supplying additional information.

Mr. CREECH. Mr. Pemberton, at the time that Congress was asked to establish the Civil Rights Division in 1957, it was asked to establish the Commission to perform certain functions—you are familiar with what these functions were—and to prepare a comprehensive report by September 9, 1959. At that time, some 2 months later, after finalizing its work, the Commission would expire.

Now, at the same time that Congress was asked to establish a Civil Rights Commission, the Congress was asked to establish the Civil Rights Division of the Justice Department.

Mr. PEMBERTON. Yes.

Mr. CREECH. Now, as was noted, in addition to enforcing the civil rights statutes, the function of the Civil Rights Division is to consult with officers of States and with the law enforcement officers on every level of society in the States—anyone whom they want to contact. Certainly, the Justice Department has a much greater investigatory

staff, a much greater professional investigatory staff than any other agency of the Government, and it also seeks to promote the understanding of civil rights problems.

The function of the Justice Department's Civil Rights Division is the collection of information; and seeking effective guarantees and action from local officials and civic leaders.

At the time the Congress was asked to establish this Division, was it not envisioned that this would be the permanent agency of the Government and that the Commission would perform more or less the functions of an ad hoc committee for an interim period of 2 years, to make a report, then to disband?

Mr. PEMBERTON. Possibly so. It would seem to me that the experience we have had with this Commission for—it will be 6 years by the time the present term expires—justifies the emphasis that has been placed in argument here today, upon independent agencies, and that if functions were assigned to the Civil Rights Division that overlap here, except as they concern relationships between law enforcement agencies and prosecutors and governmental officials as such——

Mr. CREECH. Is it your view that there is no overlapping; that either Congress should see that the Justice Department does not perform these functions, or else that the Civil Rights Commission does not perform them?

Mr. PEMBERTON. I am speaking from ignorance of the particular functions you describe assigned to the Civil Rights Division, that I was unfamiliar with until you read them just now.

On some of them, I agreed with you; they tended to sound as though they overlapped the functions of the Commission.

Mr. CREECH. In your preparing for your appearance today, and in studying the situation, have you consulted with the Justice Department Civil Rights Division?

Mr. PEMBERTON. No, this represents the independent views of our organization.

Mr. CREECH. In other words, you have not inquired as to whether there is any duplication of effort by the Justice Department Civil Rights Division and the Civil Rights Commission.

Mr. PEMBERTON. I make no claim to have made inquiry of the Justice Department.

Mr. CREECH. Insofar as you know, there might be a complete duplication.

Mr. PEMBERTON. I think we are quite familiar with the principal responsibility assigned to the Civil Rights Division of the Justice Department. It is a law-enforcing and prosecuting function, and this is totally distinct from the function assigned to the Commission.

Mr. CREECH. We hear a great deal about the reports of the Civil Rights Commission. Are you aware that many of the reports are farmed out? By that I mean that private individuals are employed to write reports for the Commission?

Specifically, I am thinking of educational——

Mr. PEMBERTON. Such as Mr. Kaplan did in the New Rochelle report?

Mr. CREECH. That is correct; and others. We have been talking about developing a staff, but couldn't any agency of the Government, do this? In other words, if the Justice Department wanted to employ

someone to do a staff study, it could do the same sort of thing that the Civil Rights Commission has done.

Mr. PEMBERTON. Do you think it would be likely that the benefits we enjoy from an independent agency doing this reporting now would be enjoyed if it were simply another portion of the staff of the Justice Department doing it, particularly if it bore upon the effect of the Justice Department's performing its functions on alleviating patterns of discrimination. Would it be as objective?

Mr. CREECH. These are both adjuncts of the executive Branch of the Government. So it is the executive branch of the Government speaking, regardless of whether it is the Civil Rights Commission or whether it is the Department of Justice.

Mr. PEMBERTON. Well, that would be like saying the Federal Trade Commission is the same as the Attorney General. This is not true.

Mr. CREECH. I am not saying it is the same. I am saying, it is the executive branch of the Government.

Mr. PEMBERTON. It is part of the same branch, but there are differences, are there not?

Mr. CREECH. These are presumably advisers to the President in either instance.

Mr. PEMBERTON. But as an instance cited a while ago shows, the President shows great independence of his sources of advice, and the source is being quite independent of the administration, isn't it?

Mr. CREECH. Certainly; but I believe you indicated that you have not made a study of the functions of the Civil Rights Division.

Mr. PEMBERTON. Of the Civil Rights Division. That is correct.

Mr. SPEISER. Mr. Creech, there has been some continuing contact by our organization with the Civil Rights Division. I think I am aware of the difference in function. The fact is that they have not operated in the same areas, in the same fashion; whether they could, I think, is a theoretical point. No matter what was stated by the then Deputy Attorney General, the Civil Rights Division has been operating in a very different fashion from the Civil Rights Commission. If you are going to consider abolishing the Commission and then giving all of its functions—if they can be given, and I don't think they can be—to the Civil Rights Division, along with a greatly expanded budget for the Civil Rights Division, and are seriously considering doing that, then this is something that, I suppose, the Congress should consider, but no one has suggested that at the present time.

What you are talking about, it seems to me, is whether or not the Commission's life should be extended, and not whether you are then going to make the Civil Rights Division larger than it is. It is not large enough. I think that it has not had the funds; it has not had the manpower it should have. I think there is still plenty of work for both of them at the present time.

Mr. CREECH. Mr. Speiser, of course the Civil Rights Division, as you say, has grown appreciably. It was established in 1957 and since then, its appropriation has risen from \$148,000 when, at that time, it was still a part of the Criminal Division of the Justice Department, to an appropriation of \$768,000.

Mr. SPEISER. Of course, that is still a paltry amount, compared to the scope of the problem that faces the country today.

Mr. CREECH. That may very well be; but the Attorney General, in justifying the appropriation, and in asking for the increased appro-

priation, has set forth exactly what I have stated here today; that these are the functions the Attorney General says the Civil Rights Division performs or will perform, or the functions which he desires it to perform.

Mr. SPEISER. Well, to a great extent, those statements as to the functions of the Civil Rights Division, are paper functions. They may very well be functions that the Civil Rights Division should explore—should expand—but I think at the present time, there are a great many of those that you have mentioned that are not being utilized by the Civil Rights Division, and I think probably any Attorney General, as well as any Government administrator, who comes to the Congress and asks for an appropriation, has in mind the practicalities of what he is likely to get. If we were to have the same sort of crash program in trying to eliminate discrimination in our national life, as we have had in science, and in orbital flights, I am sure that the appropriations that would be utilized for the Civil Rights Division would make the funds for all other Government agencies appear like mole-hills by comparison.

Mr. CREECH. I presume sir, from your statement, that you feel it would be desirable for us to have clarification from the Department of Justice of its functions, vis-a-vis those of the Commission?

Mr. SPEISER. Yes, I think it would, as long as there appears to be some form of duplication, at least on paper. I suppose this would be a desirable thing.

Mr. CREECH. Mr. Speiser, we talked about the existing functions of both the Commission and the Civil Rights Division, and we have alluded at least in one instance, to the expanded functions of the Commission under these bills.

Now, would you care to offer specific examples of how you feel the expanded authority would help solve the numerous civil rights problems?

Mr. SPEISER. I think if it were authorized to develop a staff for this purpose, that the Commission on Civil Rights might well provide a very useful service, particularly to northern and western school districts that are dealing with problems of segregation arising out of housing patterns in their communities.

In supplying information—detailed information—on the plans adopted in other communities and the manner in which they work out, this authority might permit them to develop a staff competent to give this kind of technical assistance. I would offer that as an example.

Mr. CREECH. Mr. Pemberton, in your view, would it be improper or would it be undesirable for other agencies of the Government, which have responsibility for such areas as housing or education, to conduct such studies on their own motion?

Mr. PEMBERTON. If they were charged with responsibility for determining patterns of discrimination, as the Commission is, and providing assistance to eliminate it, it might be quite academic whether the Commission did it or they did it. The fact is, of course, the Commission has begun to develop some information and expertise in these particular fields, and this is more closely related to its charge, I submit.

Mr. CREECH. As you pointed out earlier, when you talked about the expertise which the Commission has developed in many instances, cer-

tainly in the field of education, the Commission itself, has not developed any expertise. Has it not contracted for experts to do the work, as, presumably, any agency of the Government could do?

Mr. PEMBERTON. Well now, these reports, for example, in discrimination in public schools north and west, some of which were written by outside law professors, and some by Commission staff, were nevertheless assembled by the Commission staff, edited by it, and these professors did function as an extension of the Commission's staff in doing this work. I think there is an existing organization, if you would—that includes outsiders—that has developed capacity to deal with these problems.

Mr. CREECH. And any agency of the Government has such a staff. Health, Education, and Welfare has such a staff. The Federal Housing Authority has such a staff—any similar agency of the Government.

Mr. PEMBERTON. Right; including outsiders, but not necessarily dealing with discrimination in schools, and this is the function, I think the Commission can perform.

Mr. CREECH. Senator Williams has discussed earlier today measures which are before the subcommittee, and he has recommended that field offices be established. I believe you heard his testimony?

Mr. PEMBERTON. I did.

Mr. CREECH. Is it your feeling that such field offices are authorized by either of these bills?

Mr. PEMBERTON. I had not given any thought to this proposal until I heard Senator Williams make it, and I prefer not to commit myself on that.

Mr. CREECH. Is it your feeling that, for instance, the Department of Health, Education, and Welfare, the Department of Commerce, and other departments of the Government, could have field offices to offer advice in the field of education, and housing, as well as the Commission on Civil Rights could?

Mr. PEMBERTON. I did not understand your question.

Mr. CREECH. Is it your feeling they could do the job as well by having field offices? We know of course, the Department of Commerce has field offices.

Mr. PEMBERTON. Oh, I understand you.

Mr. CREECH. And a number of agencies of the Government have field offices.

Mr. PEMBERTON. I think theoretically they could, had they developed their staff with a charge to deal with patterns of discrimination; but I think it is putting the shoe on the wrong foot to say that discrimination in education is just an aspect of the problem of education. I think discrimination in education is just an aspect of the problem of discrimination and that in terms of what we exist for as a nation, as well as in terms of one of the most horrendous problems facing us internally. It is the other way around.

Mr. CREECH. Do you feel that there should be more field offices, if there are field office staffs in various communities which might be trained to fulfill the requests of other Government agencies? Is it your view that they should be used or should we have separate field offices for various agencies of the Government?

Mr. PEMBERTON. As a taxpayer, I would welcome the avoidance of duplication. This is rarely achieved in an ideal level. All I am sug-

gesting is that I don't think the mere fact that HEW field offices, and Commerce field offices, and other departmental field offices exist, justifies taking the primary charge of this agency, discrimination, and dividing it among other agencies of Government which have a primary charge in other areas, or a mandate in other areas.

Senator ERVIN. Thank you, gentlemen.

Mr. WATERS. I wonder, Mr. Pemberton, can you tell us whether or not, in view of the fact that your organization has recommended the extension of the Civil Rights Commission that you favor S. 1219, which would make it a permanent agency, rather than S. 1117?

Mr. PEMBERTON. Well, let me not express that as a total judgment, because in response to Senator Bayh, for example, I promised to express the judgment on the aspect of the S. 1219 that is not in the other measure. I have said simply that I think the Commission ought to be given a permanent life. And this would suggest—and one of these two measures would do that—to that extent, I would favor that measure, yes.

Mr. WATERS. What is your reservation?

Mr. PEMBERTON. But this is not expressing a reservation about the other features of the other bill.

Mr. WATERS. That was with respect to subpoena powers.

Mr. PEMBERTON. Yes. All I am saying is that I am not expressing myself as being opposed to those subpoena powers and other provisions in that bill.

Mr. WATERS. You understand of course, that under S. 1219, the last paragraph, the Commission would be given the power to make such rules and regulations as it deems necessary, which in your opinion, would cover such measures as subpoena power?

Mr. PEMBERTON. No. I would rather not make an interpretation of what that rule and regulation power would extend to. I would like to confine my recommendation simply to the giving of a permanent life to the Commission, and not play the role of a legal specialist, which I am not.

Mr. WATERS. It is the consensus of the organization, then, that it ought to be made into a permanent agency?

Mr. PEMBERTON. That is right.

Mr. WATERS. Thank you, Mr. Chairman.

Senator ERVIN. The next witness is Richard C. Sachs, representing the Americans for Democratic Action.

Mr. SACHS. Thank you, Mr. Chairman.

Senator ERVIN. Would the gentleman who accompanies you identify himself for the record?

Mr. COHEN. I am David Cohen, legislative representative for the Americans for Democratic Action.

STATEMENT OF RICHARD C. SACHS ON BEHALF OF AMERICANS FOR DEMOCRATIC ACTION, ACCOMPANIED BY DAVID COHEN, ESQ., LEGISLATIVE REPRESENTATIVE, AMERICANS FOR DEMOCRATIC ACTION

Mr. SACHS. My name is Richard Sachs, and I am a member of the National Board of Americans for Democratic Action. I am a businessman and in addition serve as chairman of the New York State Advisory Commission to the U.S. Civil Rights Commission.

On behalf of the officers and members of Americans for Democratic Action, I thank the subcommittee for permitting ADA time to testify on this important subject of broadening the scope of the Civil Rights Commission's duties and making it a permanent agency of the executive branch of the Government.

We support S. 1117, introduced by Senator Hart, and in addition, urge strongly that the Civil Rights Commission be made a permanent agency. This legislation is being considered against the backdrop of events that has witnessed Negro nonviolent demonstrations in support of immediate equality. The use of police dogs and firehoses in Birmingham against the Negro demonstrators and electric cattle prods against the peaceful marchers emphasizes again the need for strengthened Federal protection for these who seek their promised but unfulfilled constitutional rights. More than ever the need is evidenced for a dispassionate governmental agency to investigate not only civil rights problems but also to serve as a national clearinghouse for information and provide advice and technical assistance to Government agencies, committees, industries, organizations, or individuals in respect of equal protection of the laws.

ADA believes that the Civil Rights Commission must be made a permanent agency and that the scope of its duties must be broadened if the provisions of the 5th, 14th, and 15th amendments are to become living realities throughout our Nation. The creation of a permanent Civil Rights Commission with expanded power and duties should be recommended as an essential step toward securing for all the full measure of rights and privileges which are guaranteed by the Constitution. Beyond the establishment of a permanent civil rights agency, there is a repeatedly demonstrated need for effective, supportive Federal action to protect voting rights, integrate education, assure equal employment opportunities, open public accommodations to all, and police brutality and administer justice fairly.

We are today living in a world in which hundreds of millions of people are existing under cruelly harsh Communist and other totalitarian regimes—regimes which deny the most elemental forms of liberty and human dignity. In contrast, American history has always taught us that it is intolerable when the basic rights of free society are denied to even one citizen of the United States. Today there are millions of Americans whose basic, constitutionally guaranteed civil rights are so thoroughly abrogated as to render them effectively meaningless. These violations of constitutional guarantees—perpetrated on so many Americans by Federal, State and local governments—will not be halted unless the Congress enacts a full complement of civil rights legislation. One vital element in this program is the enactment of the pending legislation to afford permanent status and a broader scope of responsibilities to the Civil Rights Commission. This is an essential step in achieving meaningful freedom in our Nation by making the Constitution a living document for all Americans—instead of frustrating dream for many.

The essential nature of the Civil Rights Commission's work and the great value of its activities is clearly demonstrated by the remedial action which has resulted directly from its reports and investigations. The Commission reports have formed a basis for action by the President, executive agencies and Congress. The Commission reports

formed the basis for the Civil Rights Act of 1960. The President's Executive order proscribing discrimination in federally assisted housing was based on the Commission's recommendations. The well-documented information about denials of the Negro's right to vote served as a basis for the Justice Department's suits under the Civil Rights Act of 1957.

These are but a few of the well-documented and well-known results of the Commission activities. The Civil Rights Commission also has a record of achievement in other important but less well publicized areas involving the denial of civil rights. There were, for example, instances in which earned pension rights and benefits were denied to Negro citizens. These rights and benefits were restored after complaints were brought to the attention of the appropriate Federal agencies and investigations substantiated the complaints.

The two major provisions in the pending legislation establish the Civil Rights Commission as a permanent agency and provide for expanded duties. Enactment of both provisions is necessary if we expect to solve present and future civil rights problems and avoid racial tension in both the South and North.

The present functions of the Commission have been limited to fact-finding. As stated earlier in the testimony, the Commission has performed notable service in this area. The findings with respect to the denial of voting rights and equal protection of the laws revealed such intolerable abuses of the Constitution as to require appropriate Federal and State corrective action in all sections of the country.

There is an immediate need to provide a national response to the growing number of communities which are recognizing and want to face squarely their problems of racial discrimination.

We strongly endorse in S. 1117 the amendment to section 5, section 104 of the Civil Rights Act of 1957 which proposes the following duties of the Civil Rights Commission:

* * * serve as a national clearinghouse for information, and provide advice and technical assistance to Government agencies, communities, industries, organizations or individuals, in respect of equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice.

Such legislation would enable the Commission to serve as a welcome outlet for dispassionate discussion of tense racial problems. There must be no repetition of the ugly riots and the brutal use of firehoses and police dogs by local and State officials. The horrors of those terrible days could perhaps have been avoided if the community and individuals in the community had been able to avail themselves of advice and technical assistance designed to maintain law and order and uphold the constitutional rights of the Negro demonstrators.

The Commission, if given the legislative authority to serve as an information clearinghouse, and provide advice and technical assistance, could also help our northern communities meet our manifold civil rights problems. As a resident of New York, I can testify that racial difficulties are not confined to the Southern States. We have many complicated and discouraging exhibitions of discrimination in New York. And New York is not an atypical northern State.

In New York we have, for instance, experienced serious racial problems arising from massive urban renewal programs. The urban re-

newal story demonstrates clearly the essential and continuing service that can be provided by a meaningful and permanent commission.

Urban renewal problems usually result in the relocation of minority groups. There has been little participation by minority groups in urban renewal programs, despite the fact that minority families have suffered the greatest degree of disruption and hardship arising from dislocation and relocation. Even when token minority group participation was accepted, it was usually limited to the question of relocation itself, and did not extend to the more vital questions involved in fundamental planning for urban renewal.

In New York State, most local governments have failed to adopt a positive policy of nondiscrimination in relocating families. Efforts to encourage voluntary policies of nondiscrimination by real estate brokers, apartment house owners, builders, and bankers have been most ineffective.

In this tremendously critical area of housing the informational activities of the Commission—envisioned by the pending legislation—would be of major importance in easing racial tension and preventing racial disturbances.

Racial discrimination in the United States is no longer the problem solely of the Negro or other minority who has for so long endured the anguish of inequality in a country in which their equality is guaranteed. Racial problems are today national problems and they must be confronted and solved by the Nation.

As a nation, we can and we must prevent tense racial situations by progressing in an atmosphere of mutual understanding. Those communities desiring to eliminate segregation barriers and to alleviate racial tension must, in President Kennedy's words, be permitted:

The opportunity to seek an experienced and sympathetic forum on a voluntary basis which can often open channels of communication between contending parties and help bring about conditions necessary for orderly progress.

We urge both the immediate enactment of S. 1117 in its entirety, and creation of the Civil Rights Commission as a permanent agency of the executive branch.

Thank you, Mr. Chairman.

Senator ERVIN. I will frankly state that if I had been an official of the city of Birmingham, Ala., I would have allowed the people to parade just as much as they wanted to, as long as they maintained order. But I must confess, I have a little difficulty in accepting the theory that when 2,000 or 2,500 people go out on a project of that kind, that it is nonviolent, because it is coercive in nature, is it not?

Mr. SACHS. It may be coercive, sir, but I believe that it was non-violent in its inception. I believe that the violence arose as a result of the action of local officials.

Senator ERVIN. Federal law recognizes that mass picketing is a form of coercion which is likely to cause violence at any time, and I just wonder if these demonstrations are not likely to incite riots.

Mr. SACHS. Sir, I believe that the situation has been reached not only in the case of Birmingham, but in northern cities as well, as we recently experienced in Englewood, N.J., and other areas. It has reached the stage where the Negroes' denial, the denial of the Negroes' rights under our Constitution, compels the Negro and those who believe that the Negro is entitled to achieve those rights, to take what nonviolent steps they can, and they have indeed taken, to achieve them.

And I believe that the intent of these demonstrations is to focus the attention of the community and the Nation upon the denial of Negro rights, and is not, and never has been, to create any violence of any sort.

I think that the violence has arisen, if I may say so, from the reaction to the demonstrations by local officials.

Senator ERVIN. When you go out, as I said about forceful trespass, with force or a multitude, you certainly are likely to invoke a riot. Although, as I am frank to state, if I had been in Birmingham, I would have said, "Just parade to your heart's content, and parade where you want to, but please leave a little path so that people who have business with Caesar and city hall rather than God can get in and out."

Mr. CREECH. Mr. Sachs, you mentioned on page 4 of your statement that the Commission should be given legislative authority to serve as an information clearinghouse, providing advice and technical assistance.

I won't read the rest of your statement, because what I am concerned with at this point is exactly what you envisage with regard to a clearinghouse and giving advice and technical assistance. Perhaps you mean the sort of thing which Mr. Marshall, as the Assistant Attorney General has now been doing, in the type of situation that you just mentioned in Birmingham, where he has been on the scene; where his aids have been in constant communication in a crisis situation; and, where we know that he and his aids have been in constant communication with most of the officials in that State.

I wondered what other type of advice and assistance or clearinghouse information you had in mind for the Commission which is not presently being performed by the Assistant Attorney General, Mr. Marshall.

Mr. SACHS. I can speak more authoritatively about the situation in New York. I indicated at the outset of my testimony that I was also chairman of the New York State Advisory Committee to the Commission, and we are engaged in several studies, which we find it difficult to undertake in what seems to be a lack or an absence of general information accumulated from other communities, the tremendous difficulties that we have to go through to get information that could be readily available to a permanent and Federal Commission. I think it would be of immeasurable help in helping a community like New York, in many ways, a very liberal community, but in many ways, including areas of racial tension, not a liberal community, to help areas of New York to solve these problems without the necessity or the ultimate reaction that we saw in the South in recent weeks.

Mr. CREECH. Has your group consulted with the Justice Department? Have you asked the Justice Department for assistance, or have you asked them for confirmation concerning the issues before you?

Mr. SACHS. Well, we have been consulting with the Civil Rights Commission, of course, since it is through the Civil Rights Commission that we function.

We have not, as a New York State advisory committee directly consulted with the Attorney General.

Mr. CREECH. I was actually trying to separate you and your interest in civic affairs from your official capacity in the State advisory committee.

Has your community endeavored to obtain this information, obtainable from the Justice Department?

Mr. SACHS. I cannot answer for the community as a whole. I am quite certain that the civil rights bureau of the State attorney general's office has been in touch with the Justice Department with respect to many of these matters.

Mr. CREECH. Does your State civil rights office advise local communities, and make available to them, material which is received from other areas of the country.

Mr. SACHS. Yes, it does, when it is requested to do so, but it is severely handicapped and limited by limited appropriations, and by a staff which consists, I believe, of one assistant attorney general and two attorneys.

Mr. CREECH. Inasmuch as the Justice Department is the agency of the Government which is responsible for enforcing the civil rights statutes, would it be your view that that agency might be in a position to be helpful to you in understanding what some of the problems are and what the laws are and how they can be implemented?

Mr. SACHS. Yes, sir. We have no question but that it could be of tremendous value. I don't know that it would serve the same purpose that is envisaged by this legislation for the Civil Rights Commission, however. I believe that one is a question of accumulating and deriving information to enforce the law, in the case of the Justice Department. In the case of the Commission, it would be a question of the very much broader scope of the problem of solving civil rights difficulties throughout the Nation, before they reach the question of law enforcement.

Mr. CREECH. The reason I inquire is because the Attorney General has said, concerning the activities of the Civil Rights Division of the Justice Department, that in addition to the enforcement of civil rights statutes, it is taking on a program of liaison in connection with law enforcement agencies and other officials of States, in order to promote understanding of problems, and to place the State and Federal responsibilities in their proper perspective.

If local organizations are not aware of the facilities that are available to them under the Department of Justice, Civil Rights Division, why would they be more likely to turn to any other agency of the executive branch of the Government, when such information is presently available and they are not using it? Why does your group believe that they would turn to another agency of the executive branch of the Government?

Mr. SACHS. I don't know that the community is aware of the Attorney General's statements and of these activities of the Civil Rights Division.

I do believe that the Commission, which, as an independent agency, focuses attention on the very broad and complicated problems of civil rights difficulties, whether they involve violations of the law or whether they are created by traditional practices, such as in my own city of New York I already referred to the question of urban renewal, where the law is quite clear on the subject, but practice and habit makes it difficult to enforce.

I think that advice and technical assistance that could be provided by the Commission in this respect, could immeasurably aid us in solving this kind of a problem.

Mr. CREECH. You have indicated that the State advisory committees, of which I believe there are some 50, are composed of private citizens. You serve without compensation, do research, hold public meetings, and gather information and make reports in an effort to be of assistance to the Commission, is that correct?

Mr. SACHS. Yes, sir.

Mr. CREECH. And in your view, is there any reason why your organization, if it were appointed by the Attorney General, could not continue to perform a similar service? Would its effectiveness be impeded in any way, if the Attorney General deemed it advisable to have such a group in your State? Would it impede the effectiveness of your advisory committee if it were reporting directly to the Attorney General instead of reporting to the Commission?

Mr. SACHS. No, I don't believe it would. I think that Mr. Pemberton answered the same question earlier, when he indicated that if all of the functions proposed for the Civil Rights Commission, together with expanded staff and facilities and sufficient appropriation, were put under the jurisdiction of the Attorney General, he could probably have these functions administered. I do still, however, believe that the independence of the Agency of the Civil Rights Commission is important in focusing the kind of national attention upon the problems that is required to solve the problems.

Mr. CREECH. Now, your organization, the State advisory committee, is completely independent of the Government, is it not, apart from your being appointed a member of the committee.

Mr. SACHS. Independent from the Government? Well, I would say that it is not quite independent in the sense that I at least personally feel a responsibility toward the U.S. Commission on Civil Rights, which appointed this Advisory Committee.

Mr. CREECH. In other words, you feel a personal allegiance to the Commission; but if the Attorney General were to appoint you, do you feel that you could transmit the same feeling of loyalty of service to the Attorney General?

Do you think it would be any more difficult for the members of the State advisory committees, if they were asked to perform, by the Attorney General of the United States?

Mr. SACHS. No, I do not think so.

Mr. CREECH. Let me ask you this, sir. I realize that you are here today speaking in behalf of another organization—the Americans for Democratic Action.

Mr. SACHS. Correct.

Mr. CREECH. Has your organization made any study of the functions of the Commission vis-a-vis those of the Civil Rights Division of the Department of Justice?

Mr. SACHS. I don't believe we have made a specific study of that kind. I think we are familiar with the functions of both the Commission and the Civil Rights Division.

Mr. CREECH. From your view, based upon your knowledge, do you feel there are areas of duplication of effort?

Mr. SACHS. I do not believe there are areas of duplication, no. I think the Commission serves a very real and separate function.

Mr. CREECH. But the Civil Rights Division is undertaking a program of liaison and consultation in order to promote understanding

of the problems. Therefore, if, in the Attorney General's program, there should be programs with which you are unfamiliar whereby they are in fact performing the same functions as those which the Commission performs, would you favor continuing the duplication of the programs, or do you feel that one should be discontinued?

Mr. SACHS. Well, I don't favor duplication of programs. I do believe that the Attorney General's statement that the Civil Rights Division is and will continue to develop an understanding between State and Federal officials, about civil rights problems and the enforcement of the law, does in fact, serve a real purpose. I do not think, however, that contravenes the purpose or duplicates the purpose of the Civil Rights Commission, which is basically to ease racial tension, and to achieve dignity for Negroes and other minorities who are denied them.

Mr. CREECH. We have heard a great deal about easing racial tensions. Specifically, we talked about Birmingham, and we are all aware of the press reports, of the actions of the President, of the Attorney General, of the Assistant Attorney General, Mr. Marshall. What exactly has the Civil Rights Commission done? Has your study of the Commission's function revealed the action the Commission has taken to reduce tensions in Alabama?

Mr. SACHS. I don't believe I can say that these events have occurred in relatively recent weeks.

Mr. CREECH. Well now, the Commission has been in existence for some 6 years.

In an answer to a question from the Daily Press, the Chairman, I believe, of the State advisory commission in Alabama, requested or urged that Reverend King not stage demonstrations in Birmingham, and his advice was ignored.

Mr. SACHS. Of course, the Commission has recommended legislation which would achieve for Negroes in the South and in the North and elsewhere, the rights for which they were demonstrating so that I would say that in this respect in answer to your question, that the Civil Rights Commission has in fact, been attempting to do something about it.

Mr. CREECH. Have we not had statutes on the book at least since 1870 that would do the same thing? Statutes provide that any State official, who denies any man any rights he has under the Constitution or the laws of the United States, can be sent to prison for as much as a year or fined \$1,000 or both, and if he conspires with one other person to do that, he can be sent to prison for, I believe it is 10 years, and fined \$5,000 or more.

Mr. SACHS. I would be in favor of enforcing that law, sir.

Senator ERVIN. So would I.

I think that is what should be done, and in this case, they would have to prove all of the allegations, and the man would be entitled to notice and the right to be heard. Guilty people would be sent to prison. That would be the orthodox, American way of doing this.

Mr. SACHS. I cannot disagree with that.

Senator ERVIN. Instead of that, all these recommendations are that somebody be robbed of very precious rights, on the theory that that is the only way you can give other people rights. I think that is fallacious. I hate to think that the American system cannot be made to work without robbing some Americans of a basic right.

Mr. SACHS. We do however—I would certainly agree that the laws should be enforced and that laws that are presently on the books should be enforced to achieve these rights. The problem, I think, arises from both the lack of law enforcement, and from the tremendously broad posture of this problem which mitigates against huge masses of American citizens, in achieving these rights.

Senator ERVIN. Isn't it true that the broad question in the last analysis, can only be solved by men and women of good will and tolerance and mutual respect in the local communities where people live?

Mr. SACHS. Well, yes, I agree with that, sir. I also believe that one of the functions that the Commission could serve would be to try to achieve a milieu in these communities that would enable calmer feelings to dominate and that we could perhaps avoid some of the unpleasant riots and disturbances that have occurred.

The absence of a Commission, and the Attorney General's Civil Rights Division activities insofar as dealings with State officials are concerned, does not really serve this function. I think the Commission could and does serve this function.

Mr. COHEN. Mr. Chairman, may I just comment on one point you made about the enforcement of the law?

Senator ERVIN. Yes.

Mr. COHEN. ADA is really pleased to agree with you, that the law should have been enforced, which you refer to—the existing statute. We would like to only go one step further and point out that the situation in Birmingham, that the situation in Greenwood, Miss., and other places, just demonstrates the need for additional legislation, the so-called famous part III, in which the Attorney General, on the basis of a signed complaint, or on his own initiative, could go in and enforce the constitutional rights of those whose rights are being denied.

Senator ERVIN. My own opinion is—and I have given a good deal of study to this subject—that the passage of title III would be the worst thing that could ever happen to law in America, because title III gives nobody any rights; it gives discretionary power to an Attorney General. He can use the law for some people and refuse to use it for other people in exactly the same situation. He can use the law against some people, and refuse to use it against some people in another identical situation. Instead of establishing a government of law, it establishes a government of men, and I think all laws should apply to all people under like circumstances at all times, and no official of the Government should be given discretionary power to use the law for any purpose he sees fit, politically or otherwise. If a man has a right, every man in the same situation has that right, and we must not make the rights of a person dependent on the good will of the Attorney General.

Mr. COHEN. I agree with you, politics should not be involved in the administration of justice, but as the Commission has demonstrated in the past, in congressional hearings, in the areas of education, and in other areas, constitutional rights which people now have are not being enforced, and not being fulfilled, and the part III legislation would give to those people whose rights are being denied, a chance, an opportunity for governmental protection, and help in fulfilling their rights, without taking the rights away from anyone else.

Senator ERVIN. Well, we now have statutes on the books that cover that; both the civil actions, and the criminal prosecutions. If you have two sets of laws, why have another one to do the same thing?

Mr. COHEN. The situation is not whether they do the same thing. The question is how effectively will they meet the constitutional objective and with all due respect, Senator Ervin, I think since 1954, the Supreme Court has said separate educational facilities are inherently unequal; in 1955 they requested that school integration begin with all deliberate speed; and the fact is that school integration has not begun, and certainly, not with any sense of deliberate speed, and there is a great lag and great need to begin to fulfill constitutional rights.

Senator ERVIN. That is a position which is taken by those who would like to amend the Supreme Court decision, and have it say something it does not say. The Supreme Court decision does not require integration. It merely prohibits discrimination. Well, there is no use in getting into an argument on that.

Mr. COHEN. In any case, I feel obviously, that discrimination still exists.

Senator ERVIN. Yes. Thank you.

Mr. WATERS. May I ask you a question?

Mr. SACHS, you concede that the function of your organization is that of collecting information and disseminating that information through the community, so that instances will not arise which will wind up in court.

Mr. SACHS. Are you talking about ADA or the Advisory Committee?

Mr. WATERS. The State Advisory Commission to which you belong.

Mr. SACHS. Yes.

Mr. WATERS. And it is certainly not a prosecuting agency, is it?

Mr. SACHS. No; it is not.

Mr. WATERS. Have you been consulted by the Attorney General of the Civil Rights Division regarding your activity?

Mr. SACHS. No, we have not been consulted by it.

Mr. WATERS. And the fact is, that consultation with the Assistant Attorney General has not extended to your organization?

Mr. SACHS. We have consulted with the State civil rights bureau, of the State attorney general's office, but we have not as a State advisory committee, consulted with the Department of Justice, Civil Rights Division.

Mr. WATERS. And there was consultation initiated by your organization; not by the Attorney General's Civil Rights Division?

Mr. SACHS. That is right. The State civil rights bureau.

Mr. WATERS. Do you feel that there is substantial advantage in having the Civil Rights Commission so that its function is not disseminated through several various agencies of the Government, in various States? Don't you feel that a central clearinghouse is more efficient and necessary?

Mr. SACHS. I have no question about that. Yes, I do.

Mr. WATERS. And it is the belief of your organization that the extension of the Civil Rights Commission ought to be permanent, is it not?

Mr. SACHS. It is quite clear, yes.

Mr. WATERS. Is there any reason why you have not endorsed S. 1219 which makes it a permanent commission?

Mr. SACHS. The only reason is—I guess the codification of the administrative provisions in S. 1117 as opposed to S. 1219.

Mr. WATERS. And to what extent?

Mr. SACHS. I believe with respect to essentially the subpoena power.

Mr. WATERS. You understand that the provision in 1219 to allow the Commission to make rules and regulations is appropriate, is it not?

Mr. SACHS. Yes, I do understand that.

Mr. WATERS. Do you feel that it also contemplates a freedom clause?

Mr. SACHS. I do not feel competent to answer that.

Mr. WATERS. Thank you very much.

Senator ERVIN. The Commission has rules and regulations by which it denies to a man who is investigated any knowledge of who his accuser is and what the accusation is; nor has he an opportunity to confront his accuser and cross-examine him. That has caused a great divergency of opinion in the Supreme Court in *Hannah v. Larche* in which Justices Black and Douglas said that the Commission's procedures are unconstitutional.

Mr. SACHS. Sir, I believe S. 1117 does have provision to achieve fair procedures through all administrative activities of the Commission.

Senator ERVIN. That certainly ought to be done.

Mr. SACHS. Yes. That is why we are supporting it.

Senator ERVIN. It is a rather curious thing, that a Commission, that is created for the purpose of enforcing constitutional rights, adopts procedures which Justices Black and Douglas very eloquently say, deny those rights.

Mr. SACHS. I guess the reason for the Commission—and I cannot read their minds and have not discussed it with them—but I would guess the reason the Commission did this is in order to protect the Negroes from retaliatory action in their communities.

Senator ERVIN. And that was the same reason which caused an agency of the Federal Government in violation of civil service laws, to refuse to reveal to the man who was discharged the name of the one who made the charge.

Mr. SACHS. I am not supporting the lack of confrontation, sir.

Senator ERVIN. The committee is indebted to both of you gentlemen.

Mr. SACHS. Thank you, sir.

Mr. COHEN. Thank you.

Senator ERVIN. The committee is recessed until 3 p.m.

(Whereupon, at 1:20 p.m., the committee recessed until 3 p.m., on the same day.)

AFTERNOON SESSION

Senator ERVIN. The committee will come to order.

Our next witness is Mr. Dale L. Button.

Mr. Button, we will be glad to hear from you.

STATEMENT OF DALE L. BUTTON, UNITARIAN FELLOWSHIP FOR SOCIAL JUSTICE, WASHINGTON, D.C., ACCOMPANIED BY ROBERT E. JONES

Mr. BUTTON. Mr. Chairman, my name is Dale L. Button. I am speaking on behalf of the Unitarian Fellowship for Social Justice, a national organization which represents the social concerns of Unitarians and Universalists.

I am accompanied by Mr. Robert E. Jones, executive director of the Unitarian Fellowship for Social Justice.

We value highly the time of this subcommittee, and we ask that the brevity of our comments not be taken as a measure of the importance which we feel toward the subject, and toward the work of this subcommittee in respect to it.

In fact, we hope that our brevity may serve to magnify our expression of our position.

I will not comment in any detail on the feelings of our organization with respect to the enactment of specific elements of civil rights legislation, nor in a way that would entertain any question whether to have or not to have civil rights legislation.

Unitarians and Universalists, individually and as an organized body, support in every respect the enactment and implementation of meaningful legislation to make fully effective, in practice, the citizenship which millions of Americans have only in name.

We do not appear here to equivocate our support for civil rights legislation.

We are here only to express our concern that such needed legislation, and the administrative body created to implement it, shall be sufficiently strong to act effectively.

In that concern, the main thrust of our comments is to the effect that we support the legislation which would make the Civil Rights Commission a permanent body.

We do not view the creation of a permanent Civil Rights Commission as an expression that our problems in this area will never be solved, any more than we view the maintenance of a Defense Department as an admission of the inevitability of war, or of a Department of Justice, that we shall never attain justice.

Those bodies were created as necessary means to accomplish the objectives with which they were concerned, and we feel that creation of a permanent Civil Rights Commission ranks equally with them in importance.

I believe our international image would inevitably benefit if other citizens of the world were to see that we have a permanent body devoted to the attention of our own citizens' civil rights.

We further believe that creation of the Commission as a permanent body would inevitably lift the effectiveness of the body in its own deliberations and actions.

Although the analogy is far from complete, there is enough of a principle involved to make the point when I suggest that the wisdom is never seriously questioned in making our Federal judiciary and our Federal judges absolute in their tenure, is never seriously questioned.

We sincerely appreciate this opportunity for our organization to make its position known before this subcommittee, and we thank you.

Senator ERVIN. Mr. Button, the committee is deeply grateful for your appearance and also to your associate for his appearance.

Mr. BURTON. Thank you.

Do you have any questions?

Senator ERVIN. Are there any questions?

Mr. WATERS. Just one, Mr. Chairman.

Mr. Button, I notice from your statement that you feel that the Civil Rights Commission should be made a permanent body and, to that end, I would suppose that you support the principles of S. 1219

which makes the Commission on Civil Rights a permanent agency of the executive branch of the Government.

Mr. BUTTON. The two bills we are discussing before the subcommittee today, yes, that embodies the feature that we favor; embodying the creation of the Civil Rights Commission as a permanent body.

Mr. WATERS. Thank you, Mr. Button.

Thank you, Mr. Chairman.

Senator ERVIN. I have a telegram from Mr. Clarence Mitchell, director of the Washington Bureau of the National Association for the Advancement of Colored People which he asks to have incorporated in the record at this point.

If there is no objection, I will order it printed in full in the record at this point.

(The telegram referred to follows:)

WASHINGTON, D.C., May 22, 1963.

HON. SAM J. ERVIN,
Chairman, Subcommittee on Constitutional Rights,
Senate Office Building, Washington, D.C.:

The National Association for the Advancement of Colored People strongly supports the continuation of the Civil Rights Commission. We believe that S. 1219, which would give permanent status to the Commission, would be the most desirable bill and urge its approval; however, it is also apparent that the additional functions and rules suggested in S. 1117 are very desirable and we urge that these be incorporated in S. 1219 as amendments. In view of the fact that your subcommittee will hold additional hearings on other civil rights bills, we have withdrawn our request to be heard on May 22. We do wish to be heard at an appropriate time when the bills on other civil rights matters are considered. In the interest of saving time and also to show our support of the Commission, we respectfully ask that this telegram be included in the hearing record in lieu of an appearance by a representative of our organization at this time. However, I have been and shall continue to be present at the hearings and if you or any member of the subcommittee would care to have me answer any questions, I will gladly do so.

CLARENCE MITCHELL,
Director, Washington Bureau, NAAOP.

Senator ERVIN. Call our next witness.

Mr. CREECH. The next witness is Mrs. Wallis Schutt, member of the Mississippi State Advisory Committee of the Commission on Civil Rights.

STATEMENT OF MRS. WALLIS SCHUTT, REPRESENTING THE MISSISSIPPI ADVISORY COMMITTEE ON CIVIL RIGHTS

Mrs. SCHUTT. My name is Mrs. Wallis Schutt. I live in Jackson, Miss.

I am presently serving as chairman of the Mississippi Advisory Committee. Having been an active working member of this committee since its formation in December of 1959, I hold strong and deep convictions concerning the absolute and vital necessity for the extension of the life of the Commission for the next 4 years. To question the need for or the value of legislation to this effect seems to me to be not only unwise, but also most unrealistic.

There are many things that could be said in support of Senate bill 1117 and many aspects of the legislative process of which I have only limited knowledge. However, I can tell you of the value of the Commission on Civil Rights as we in Mississippi see it.

First and foremost, the value of the services rendered by the Commission to the Congress itself and to the Chief Executive. What

other provision do we have whereby a group of responsible and representative citizens may work together to determine objectively what the true facts are in regard to denial of civil rights based on color, race, or creed and having so determined to advise and recommend not what is expedient, but what is right?

We are most fortunate that the Commission is composed of a group of such eminent men.

We of the Mississippi State Advisory Committee would also hope that our work would be considered of value to you gentlemen of the Senate. Our committee meets nearly every month to gather factual information about the treatment of our Negro citizens under the law as it is applied in Mississippi. We earnestly strive to hear all sides of the question. We invite any official who is likely to be criticized to attend our meetings and give us his view of the matter. We try to meet in as many parts of the State as is possible in order to get a truly representative picture.

The press is invited to our meetings and we report on our findings and recommendations to the Commission on Civil Rights. Our last report was published by the Commission in January of 1963.

We used only information that had been presented to our committee in sworn affidavit or was otherwise known to be reliable. We did not use some of the more startling and really frightening accounts which were told to the committee during our meetings, but for which we felt sufficient substantiating evidence was lacking.

Our report contained enough information I believe to bring into question the representative and democratic nature of the system of State government in Mississippi.

We talked to many people who had been mistreated by the police, but felt they had no one to turn to until our committee made its appearance.

We have tried to remind our State government of its obligation to all and not to just the white citizens of our State.

Unfortunately, I cannot say that we have noticed any great improvement in the attitude of our State leaders on this subject since the publication of our report. But I can say with certainty that the report has been widely noticed by others in and outside the State.

The entire advisory committee has been grateful for the notice given the report by Senator Javits and Congressman Diggs by inserting it in its entirety into the Congressional Record.

We earnestly hope that our work has been of some value to you gentlemen in your most important task of passing the laws under which we all live.

Coming from Mississippi as I do, it is well nigh impossible to find words strong enough to convey accurately the importance to the Negroes of having one place where they can speak their minds and tell of their troubles.

The existence within the State of an organization dedicated to the equal rights under law of all citizens is immensely important to a people who are not receiving the benefits of those rights just now, but know there is hope so long as the Nation is aware of their plight.

Equally important, the advisory committee provides one of the first opportunities for Negro and white citizens of good will to discuss the common problems of our people and our State in this time of tran-

sition, bringing these problems into the open for objective discussion by a biracial group which is a step forward in Mississippi.

Perhaps the best way to convey to you the sentiment of the Negro population is to read to you a statement given to me yesterday morning by the Negro Ministerial Alliance of Jackson. I can testify that this is a statement representative of the thinking of at least 95 percent of our Negro population.

It is dated Jackson, Miss., May 15, 1963, and reads:

We, the members of the Interdenominational Ministerial Alliance wish the continuance of the Civil Rights Commission for the following reasons:

1. This is the only way that the Negro can express grievances and expose the injustices that he is experiencing.

2. This is the only way the white and Negro can communicate together and discuss their problems.

3. We feel unless the Commission is continued, the Negro will have no one or source in which we can appeal and will be compelled to resort to violence or become more radical.

4. We are praying that the Commission will continue because of a recent statement made by Mayor Allen Thompson, of Jackson, Miss., saying that he will never permit Negro and white to meet together as a biracial committee.

That is signed by T. B. Brown, president, and G. R. Haughton, secretary.

For many thousands of our citizens to let the Commission expire at this moment in time would be, in their opinion, utterly disastrous.

Another point I would like to make concerns the value of the work of the Commission and the work of the advisory committee to the white citizens of my State.

I have always felt that one of the most important services of the Commission and the advisory committee is education. In my own case, I have been concerned with the rights of our Negro citizens for many years, well before the Commission came into existence. But only since beginning to work with the advisory committee have I learned the true state of affairs regarding the everyday trials that Negroes of my State must endure. It has been shocking to every member of our committee.

In our report of January 1963 we tried to convey a sense of urgency to our fellow citizens and I must say that the response has been gratifying.

Friends and neighbors in Jackson and other parts of the State, ministers from various parts of the State, and educators from many places have phoned or written to me and other members to discuss the report and to express their astonishment and dismay.

Gentlemen, as far as my State is concerned, we have only scratched the surface. It is only recently in spite of all that opposing forces could put in our way, only recently have we been able to so establish our committee in the eyes of the citizenry at large that they are beginning to seek us out and hear what we have learned.

How else and in what other way can we begin to dispel the abysmal ignorance of the great majority of our responsible white citizens as regards what the Negro citizen lives through daily and really wants, expects, and is determined to gain for himself? And until this ignorance is dispelled, how, under the shining sun are we to avoid these tragic and heart-breaking disturbances that continue to plague us or even having experienced them, how are we to learn from them and move forward together unless we have somebody set

up to render the assistance and give the answers to the many questions that must be asked before the truly constructive steps that issue out of understanding can be made to rectify the situation.

It would have been most valuable, of course, to have, had the Commission itself hold a hearing in Mississippi.

In 1961 and again in our 1963 report, our advisory committee recommended that a hearing be held in Jackson. We fully understand the overriding reasons that made it impossible for the Commission to meet in our State this year.

We urge you to prolong the life of the Commission so that it can perform this valuable service to the citizens of Mississippi.

Recommendation No. 2 of our 1963 report stated as follows:

That the Commission on Civil Rights hold formal public hearings in Mississippi on charges of denial of equal protection of the law on account of race and that these hearings be held periodically so long as the present situation exists and the Commission remains in force.

No one can gainsay the value of the wealth of information which is at the fingertips of the Commission; information that has been gathered painfully and slowly by many earnest citizens as they listened patiently in face-to-face confrontations with many other citizens as they pour out at length their real or imaginary grievances in all kindness and all sympathy these persons listened and then patiently advising, counseling the witnesses as best they may, giving them what support and encouragement they can, knowing all the while how slow will be the processes that will eventually rectify these great and terrible wrongs, wishing it were otherwise, but recognizing that this is the democratic procedure and counseling those who appear to be patient, then turning around to the controlling forces who have exploited the situation and facing them with the inescapable truth of their failure to assure to all citizens equal opportunity and basic human rights.

Further, turning to the white citizenry at large, giving them at one and the same time enlightenment as to the true state of affairs and a not-too-gentle prod to bestir themselves to do something about coming to a realization of their responsibility in this whole problem.

In my humble opinion, such procedure is truly democracy in action. This is the day-to-day practical application of the great ideals to which we are all dedicated.

Finally, I should like to mention the importance of the work of the Commission and the Mississippi State Advisory Committee as it affects the State's image.

For those Mississippians, and there are many, who do not support the tenets of the white citizens councils, this has been the only public expression on any but the most limited scale of what they think and feel to be true.

We do not enjoy being thought of as being loyal to a program or laws which we consider wrong and abusive.

Yet, we are all loyal to Mississippi. We are loyal to Mississippi and also loyal Americans loving and upholding and fighting for the ideals on which America was founded and we want the world to know that there are Mississippians like that.

We recognize and appreciate the achievements and the great services rendered by our own Representatives here in Congress. We are loyal to them, even though we must disagree with them on some points.

This other voice of Mississippi must be heard. In the immediate and foreseeable future, I believe this role can best be played by our advisory committee.

I would add one final word. I cannot count the great number of Mississippians from all walks of life who are in agreement as to the need for the existence of the Commission and its related State committees. From bishops to domestic servants I have engaged in dialogue with hundreds of citizens. Educators, clergymen, businessmen, professional men and women, laborers, housewives, and students, all these have expressed directly to me their appreciation for the work being done and their belief in the necessity for the continuance of the U.S. Commission on Civil Rights.

This is not in my written statement, but I would like to express my deep appreciation for this opportunity to come and make this statement to this committee.

Senator ERVIN. The committee appreciates your coming. Undoubtedly, in Mississippi as in other States, there are unfortunate situations, but I feel constrained to say that I think Mississippi has been discredited for a lot of things that have not occurred.

Several years ago I was conducting hearings on civil rights bills, and an organization which should have known better brought a witness whose name was Courts. In Mississippi he was a merchant, but as he crossed the Mason-Dixon line and came North he ceased to be a merchant and acquired the title of reverend.

Now he was brought before the committee and complained he was run out of Mississippi by a threat on his life and left a \$12,000 business behind. He also had a prepared statement wherein he said that people in Mississippi were murdering Negroes and throwing their bodies into the streams. I questioned him, and I asked him to tell who had been murdered to his knowledge. He told me that some colored woman and a Negro school principal were killed.

I made inquiry and found that the woman he talked about was driving a car by a lake with her three little children in the rear seat. She lost control of the car and ran into the lake where three Negro fishermen rescued the little children from the car. Before they could rescue her, she was drowned. That story was brought here by a man who carried it all over the North making speeches to defame Mississippi on that account.

I found the other tale referred to a man who committed suicide from bad health. He left a suicide note, a photostatic copy of which I later obtained and put in the record, and he stated in this note which was identified by his wife as being entirely in his handwriting, that he was committing suicide because of his physical illness. I received that information too late to confront the witness with it.

I also received information that he had never filed any income tax return. He had only two dependents besides his wife and with a \$12,000-a-year business each year he ought to have paid considerable income tax.

I asked the representative of the organization that brought him if they would bring him back before the committee in the morning, and I said I could demand his appearance under subpoena so he would have to be here. I was assured by the representatives of the organization that brought him here and which had carried him all over the country to defame Mississippi that he would be brought back the next

morning. However, instead of being brought back he was removed under the cover of darkness, surreptitiously, and he fled from the committee and has never been back to Mississippi.

That is just one of the cases I know in which all that is said about Mississippi is not true.

Mrs. SCHUTT. Senator Ervin, I have lived in Mississippi for over 20 years. I have raised a family of five children. I have three grandchildren living there. I have worked in my community. I know it pretty well.

I know that these things you say are true. I think that I have other members who work with me with intelligence enough to realize that there are some things that have been said that could not be substantiated.

I have made it my business to find out, because I wanted to know the truth, and I have done this by personal contact with the people, and for all these that are not true, there are a shocking number that are; and the fact is that they have been afraid to come and say what is really so; they don't want to suffer reprisals. They don't want their families to suffer the reprisals and retaliations that they know they are going to suffer.

So I appreciate everything you say is true and I know that sometimes things have been said that were not true.

In what I say to you, I have no wish in the world, or how could I possibly want to defame my State? I don't want to but I am telling this subcommittee that these things I know are true; and I know that these people have no way of securing justice.

At present, there seems to be no way of furnishing these rights, and I can also tell you that the majority of the citizens of my State do not know the truth and they are just as ignorant as I was until I had the opportunity afforded me by working with this committee.

Now the Commission has the opportunity, this kind of opportunity, to present this to other citizens of my State.

Senator ERVIN. The Commission said in its statement that it had received more than 100 complaints by Mississippians.

Now, according to my recollection the colored population of Mississippi is 915,743, isn't that about correct? One hundred complaints is not very many out of that population, is it?

Mrs. SCHUTT. Would you like to hear my opinion of why this is all the complaints that have come in?

Senator ERVIN. I just indicated that there are a lot of good people in Mississippi. I have known a lot of Mississippians that I consider very fine people.

Mrs. SCHUTT. I think the finest people in the world are in Mississippi and that is why I am so concerned that they know the truth.

Senator ERVIN. Do you think that innocent people ought to be penalized for the sins of the guilty?

Mrs. SCHUTT. I certainly do not.

Senator ERVIN. That is the reason I was struck by this recent recommendation of the Civil Rights Commission that all Federal grants to Mississippi be cut off. That is the way I construe the Commission's recommendation.

According to my understanding, in Mississippi they have on the rolls or did have on the rolls, 44,935 white people, 70,445 colored people

and 237 nonwhites such as Indians and others drawing old-age assistance.

Do you not agree with me that it would be an injustice to these old people to deny them old-age assistance merely because of the wrongdoing of officials in Mississippi?

Mrs. SCHUTT. I certainly do, Senator Ervin, but I would like to say further that I think that recommendation was misunderstood. It has been misinterpreted, and the real question that comes to my mind, and I think should come to the minds of thinking people knowing the makeup of the Commission and knowing the makeup of the State advisory committees, the kind of people who make them up, what could be so wrong as to have driven people to make this kind of recommendation?

There is something seriously wrong when we would support such a recommendation as that. It is probably not realistic or practical, but you can come to a point—you can just try and try and finally reach a point of frustration in trying to get what you know is right.

Senator ERVIN. Well, I heard one time that the worst man who ever lived was the man who took pennies away from the blind man. Yet I believe that is the intent of this recommendation, for I disagree with your interpretation, and I might say the President of the United States, if what the papers quoted is right, disagrees with it. As I construe it, that is the only thing this can mean. Otherwise they would not have said that all the Federal grants to Mississippi ought to be cut off. The Commission would cut out the grants to put braille books in libraries for blind people to read. They would cut out aid to the blind in Mississippi allotted to them under the laws, just as the laws allot the same kind of aid to other parts of the United States, this aid to the blind amounts to \$1,443,000.

Do you think that men far removed from the scene are justified in asking that the blind people in Mississippi be denied that relief while blind people in all the other 49 States enjoy it?

Mrs. SCHUTT. Senator Ervin, of course I do not think that should be done; but I would like to say this—I do not think because perhaps this recommendation was unwise (this is one recommendation and only one) that the Commission should not be extended. And I am a little weary of the people in my State talking so much about this one recommendation of the Commission and failing to answer any of the charges that we have made as to things that are wrong.

And to talk about this is fine, but this has nothing to do with the plight of the people and the things that are happening that need to be rectified.

Senator ERVIN. I have to disagree with you. This has to do with the suitability of the Commission to make recommendations as to how the ills of this country should be cured, and how people of different races should dwell together in harmony.

I have difficulty in accepting any recommendations from men who will even suggest much less recommend that because some of the State and county officials of Mississippi make mistakes that all of the blind people in Mississippi and the crippled children of Mississippi, and the people suffering with tuberculosis in Mississippi, and people suffering with cancer and heart disease should be denied the benefits given to them in the other 49 States of the Union by Federal Government.

That the waters of Mississippi should run polluted to the sea simply because certain State or county officials in Mississippi are not complying with what the members of the Commission think are their duties.

Mrs. SCHUTT. I think I should repeat that interpreted thus, I agree that this was not a good recommendation. But this is one. It was one part of a report and I still contend that this does not take away all the great value; it does not take away from the many great benefits that have accrued to the citizens of my State because of the existence of the Commission and I still maintain even though this may have been an unwise and impractical and unrealistic recommendation, I still maintain that there has been much accomplished of great value; and I maintain that it has a further job; that it is an unfinished job; that much can be accomplished by the extension of the life of the Commission for the next 4 years as proposed in this Senate bill.

Senator ERVIN. Well, you have stated your position very clearly.

Mrs. SCHUTT. Thank you, sir.

Senator ERVIN. And I might say very eloquently on that point. But they have Federal courts in Mississippi, do they not?

Mrs. SCHUTT. Yes, sir.

Senator ERVIN. I do not know whether you know that juries in Federal courts in each State are made up under the direction of the judge.

Mrs. SCHUTT. Yes, sir.

Senator ERVIN. And do you not believe that the better way to proceed is to prosecute in the Federal courts anyone who is denying anybody's constitutional or legal rights and punish the guilty parties instead of inflicting punishment upon helpless children and blind people and elderly people?

Mrs. SCHUTT. Senator Ervin, it seems to me that if everything refers back to this one recommendation that was made and if everything is in relation to this, you are making it very difficult for me to state what I think.

I have already said what I think about that, and I cannot answer it on that basis.

If everything is going to be referred back to this one recommendation and we are constantly going to talk about this, then I cannot answer you.

Senator ERVIN. Well, I could ask you about many things and talk about many things. The reason I am asking you about this recommendation is because of the harm and injustice which carrying out this recommendation would do to the very people who interest you.

The figures show that 77.7 percent of all the money that goes into Mississippi from the Federal Government for dependent children is spent on Negro families; and so I am fighting limb for limb too, just like you are doing.

Mrs. SCHUTT. Yes, sir.

Senator ERVIN. I do not think they ought to be punished because the Civil Rights Commission does not approve of the conduct of some of the public officials in Mississippi.

Mrs. SCHUTT. Well, I will have to repeat my statement that there has been much that has been done of great value and I think it is more important to look at the reasons why these figures are what

they are, and to ask the question seriously and honestly as to whether or not the real reason for this percentage is because these people are being denied the opportunities and the rights to which they are entitled. Now I have gone and talked and have gone around in circles——

Senator ERVIN. You have not gone around in circles. You have expressed your opinion very well.

Mrs. SCHUTT. But I am talking about what is my experience on this committee.

Now we go and find out from a Negro citizen that he has felt that he is deprived of an opportunity to secure employment for which he is qualified.

So we investigate that and I go and talk to the personnel officer, the man who does the hiring and what does he tell me? He tells me that the Negro citizens are not qualified as they should be because—and he told me this too—that the schools are not preparing them as they should be prepared and he says to me, “You’ve got to begin with the school situation.”

Well, it just goes round and round. I think these are the places to which we need to turn our attention, and get the true facts of what the school situation is, what the opportunities are, the denial of opportunities. The truth of this has come out in our State through the work of the advisory committee and the Commission.

Senator ERVIN. Well, certainly it would not help the school situation to implement the recommendations of the Civil Rights Commission and take funds from the State and its schools which runs in excess of \$5 million a year.

Mrs. SCHUTT. I quite agree.

Mr. CREECH. Mrs. Schutt, you have mentioned that you feel that there are many advantages which have accrued to the people of your State because of the Civil Rights Commission, and I realize you are a member of your State advisory committee and that most of your testimony here today has been concerned with the activities of the State advisory committee.

I just wonder if you are equating your activities, that of the committee with the Commission when you make this statement, because, actually, the Commission has not been into your State, has it? The Commission has not held any hearings there.

Mrs. SCHUTT. No; it has not.

Mr. CREECH. So when you speak of the Commission you mean the advisory committee as an adjunct to the Commission, is that correct?

Mrs. SCHUTT. I do in a certain sense, but I think also that in requesting expressions of opinion from other citizens, I think they understood as I understand, that the Commission has a very big part in this.

Mr. CREECH. Yes.

Mrs. SCHUTT. And I think it is difficult to separate the two.

But we have been serving as an advisory committee to the Commission and, of course, we have had direction and assistance from them and while they have not been able to come into the State as we requested, and we understand why, still our work, is, in a sense, their work.

Mr. CREECH. Well, the reason I asked that question was because in 1957 when the Civil Rights Commission was established, it was with

the idea it would exist for only 2 years and then make its recommendations and report and then terminate; at the same time the Civil Rights Division was established in the Department of Justice and in addition to enforcing the civil rights statutes, the Division consults with the officials of the States in order to promote better understanding of the civil rights problems; it collects information and seeks effective guarantees from local officials and civic leaders. I just wonder if you feel there is an overlapping of functions of the Commission and the Civil Rights Division, whether you feel it would make any great difference if an organization such as yours, the civil rights advisory committee for the State, were an adjunct of the Department of Justice instead of the Commission, if, in fact, the Civil Rights Division is duplicating the work of the Commission.

Mrs. SCHUTT. In my opinion, the work has not been a duplication. I have stated I was supporting the proposal to extend the Commission for a 4-year period.

I cannot really conceive of the Justice Department being able to do at this time and in my State the work that I feel the Commission can do.

There might be some working together and assistance, but I do not think there would be any real overlapping in the work that needs to be done in the immediate future.

I personally do not think that the Justice Department could do this thing and work as well.

The makeup of the Commission and the makeup of the State advisory committee is such that they can be objective and they try to be disinterested as far as taking one side or the other.

Mr. CREECH. Inasmuch as you have said that the Commission itself has not been into Mississippi, to your knowledge is the Commission's interim report on Mississippi predicated upon the representations made by your State advisory committee? In other words, did the Commission when it issued its interim report on Mississippi recently, did it base its report on information furnished by the advisory committee?

Mrs. SCHUTT. It is my understanding that this report was based on information that came from or through the advisory committee from our meetings.

We have had these open meetings and from that and also from affidavits that were sent in.

Mr. CREECH. I see. Now, at your meetings you do not have the subpoena power, do you?

Mrs. SCHUTT. No.

Mr. CREECH. And you actually do not conduct hearings, as such?

Mrs. SCHUTT. We do not.

Mr. CREECH. They are just open, informal meetings.

Mrs. SCHUTT. Yes.

Mr. CREECH. So you have no opportunity to place anyone under oath; is that correct?

Mrs. SCHUTT. That is correct.

Mr. CREECH. So none of the information which you receive is actually sworn testimony; is that correct?

Mrs. SCHUTT. Well, we get the sworn affidavits. So in this way they are sworn to. We have those, the written statements that are sworn to. But as far as any administering of an oath, we have no such power.

Our former chairman was always careful to, as he opened the meetings, instruct those who were coming, always careful to tell them that it was our expectation that they would be completely truthful and so forth.

He also explained that we had no power to put people under oath and we had to simply listen and put down what they tell us.

Mr. CREECH. And then when someone appeared before you at these public meetings and we will say, for example, alleged that he was deprived of equal protection under the laws, such as the case you discussed in your annual report for last year, how did you check this out? You mentioned that you did a great deal of investigation.

Did you then go and interview the police officials or the law enforcement officers who were accused of brutality and that sort of thing?

Mrs. SCHUTT. No, we did not do that. What I referred to in saying that we had talked with these many people, in having these open meetings we usually had large attendance and there were supporting people.

We also had the newspaper reporters. We were pretty sure that these things had actually taken place.

We did ask the officials in question to come and bring information to us. We do not go out and see the people. We ask them to come to us. They have known about the statements that were made and we have asked them if they are not true to come and place it before us or give us the opportunity of hearing the other side.

Mr. CREECH. Yes, but going back to what you said earlier, then it is your understanding that the Commission's interim report was based upon information which was supplied by the Mississippi State Advisory Committee and that your committee does not have the subpoena power and that you conduct informal type of proceedings.

Is that a fair statement?

Mrs. SCHUTT. It is my understanding that this was based on these many affidavits.

Mr. CREECH. Yes.

Mrs. SCHUTT. That had been turned in, plus other information.

We did have transcripts of some of the meetings.

Mr. CREECH. So at the time the Commission issued its statement, the Commission had never really been into your State and the Commission itself never held any hearings there, is that correct?

Mrs. SCHUTT. That is correct.

Mr. CREECH. Mrs. Schutt, I know you mentioned that you feel the work of the Civil Rights Commission has benefited the State directly. I wonder have you had occasion to compare the functions of the Civil Rights Division with those of the Civil Rights Commission.

Mrs. SCHUTT. Civil Rights Division of the Justice Department?

Mr. CREECH. Yes.

Mrs. SCHUTT. No, I have not compared them.

Mr. CREECH. In the event that Congress should permit the Civil Rights Commission to terminate this fall, would it be your feeling that if this were to happen, and if the Attorney General were to ask the various States to have Committees such as yours to advise him and to undertake very much the same type of functions that you have been undertaking as an adjunct to the Civil Rights Commission, that your work would be any less beneficial?

Mrs. SCHUTT. I am not sure I understand.

Mr. CREECH. I say in the event that Congress should permit the Commission to terminate this fall and the Attorney General were to invite a committee such as yours, a State advisory committee to continue to function, to make recommendations to the Attorney General very much as you have made recommendations in the past to the Civil Rights Commission, would it be your feeling your representations and your recommendations would be any less beneficial?

Mrs. SCHUTT. I am sure I cannot give a quick answer to that. The situation in our State is a very difficult one and the real benefit of the Commission as it has been set up and as the advisory committee has worked, is that people have felt free to come. I don't believe that I can really give a good answer at this time.

I would have to think about that and I would have to really weigh what the difference would be as far as those people who come and appear before us.

Mr. CREECH. Thank you.

Mr. WATERS. Mrs. Schutt, I assume that the people who come to your organization and talk to you might otherwise be reluctant to go to a branch of the Attorney General's office; is that understanding correct?

Mrs. SCHUTT. I think perhaps many of these people at this time, because of the way we are set up, might find it easier, for them and they would feel more free to come.

As I say, this is hard to weigh. I do not know how much they know, the people who have been coming.

I do not know how much they know about whether or not there would be any differences.

I can only tell you how they have expressed at this time their desire for a continuation, and what it has meant to them and how important it is and that it is the first time there has been such an opportunity for them.

I would like to say also that they would not even come before us in the beginning, but we have established a feeling of confidence so that we have been able, more and more, to have people come and tell the real situation, the real problems that they are facing.

Mr. WATERS. You have worked in this field now for about 3½ years, have you not?

Mrs. SCHUTT. I began in December of 1959.

Mr. WATERS. And over that period of time, your organization has established relationships with the particular groups who know about things that happen in your State, have you not?

Mrs. SCHUTT. Yes, sir.

Mr. WATERS. You feel this ought to continue?

Mrs. SCHUTT. I think it really is essential at this time that it should continue.

Mr. WATERS. I note, Mrs. Schutt, that you endorse the continuation of the commission for a 4-year period.

Since you have been active in this field for 3½ years, I assume you do not feel that these problems are going to reach their eventual solution within a 4-year period, do you?

Mrs. SCHUTT. No, I do not. But I am not sure I feel that a permanent extension of the Commission as it is now set up would be good.

I am inclined to agree with those who feel that a 4-year extension of the Commission as it is now set up might be the best thing.

Senator ERVIN. You would prefer for all the officials to be given permanent jobs, would you not?

Mrs. SCHUTT. Yes, sir.

Mr. WATERS. Mrs. Schutt, have you had a chance to look at S. 1219 which establishes the Civil Rights Commission as a permanent agency of the Government?

Mrs. SCHUTT. I have not studied that bill thoroughly.

Mr. WATERS. You would support the proposition, however, that it be made a permanent agency, would you not?

Mrs. SCHUTT. I would have to study the bill before I could say that I would support this.

Mr. WATERS. In connection with the activities which have come to your attention during the period of your interest in this field, would you say that the same information has been available to the Attorney General's Civil Division over the period of time you have been looking into this type of activity?

Mrs. SCHUTT. You are asking if all of this information that we have has been available?

You mean has it been available to him?

Mr. WATERS. Yes. Has information come to you which has not been made known to the Civil Rights Division of the Justice Department?

Mrs. SCHUTT. I am not sure that I could give you an accurate answer to that.

I think we have made information available that has come to us. It would be made available to them if it warranted it.

Mr. WATERS. Are you aware of any prosecutions undertaken by that Division in your area as a result of the information which has come to you?

Mrs. SCHUTT. There have been some.

Mr. WATERS. And, of course, that is the reason for their existence, they are a prosecutive arm, are they not?

Mrs. SCHUTT. That is right.

Mr. WATERS. The Civil Rights Commission is an entirely different type of organization which is designed to elicit information and is to make it available to focus attention on a situation.

Mrs. SCHUTT. Right. Again, I would like to emphasize once more that this educational aspect of the work of the Commission is to me, and not only to me, but to many other citizens, one of the most important aspects and the one that I feel might be accomplished over a shorter period of time.

We would hope that some things, once the education is taken care of, would be rectified.

Mr. WATERS. Thank you very much, Mr. Schutt.

Thank you, Mr. Chairman.

Senator ERVIN. We want to thank you for coming here and giving us the benefit of your views. Do your children go to school in Jackson?

Mrs. SCHUTT. Well, some of them. I have a grandchild who will start school this fall.

Senator ERVIN. Well, that is fine. I would not have thought you were old enough to have grandchildren. I have a lot of grandchildren.

Mrs. SCHÜTT. I have quite a few myself.

Senator ERVIN. Mrs. Schutt was the last witness scheduled for today.

The committee will stand in recess until 10:30 tomorrow morning.

(Whereupon, at 4:05 p.m., the subcommittee recessed, to reconvene at 10:30 a.m., Thursday, May 23, 1963.)

CIVIL RIGHTS COMMISSION

THURSDAY, MAY 23, 1963

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m., in room 2228, New Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee), presiding.

Present: Senators Ervin, Bayh, and Keating.

Also present: William A. Creech, chief counsel and staff director; and Bernard Waters, minority counsel.

Senator ERVIN. The subcommittee will come to order.

Before we call the first witness, let the record show the chairman of this subcommittee is in receipt of a telegram signed by Lawrence F. O'Donnell, attorney, whose address is given as First State Street, Boston 9, Mass., asking the subcommittee to prevent a hearing from being conducted or in the process of being or threatened to be conducted by the Massachusetts Advisory Committee.

This subcommittee, however, has no authority over that advisory committee.

Does any member of the Civil Rights Commission or Dean Griswold or Mr. Bernhard care to look at this?

I will turn the telegram over to the Commission as we have no authority to take any action in this matter, and I will request that the Commission look into that telegram and reply to Mr. O'Donnell.

Our first witness is Senator John Sparkman.

Senator Sparkman, the subcommittee is delighted to have you with us and we will hear you at this time.

STATEMENT OF HON. JOHN SPARKMAN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SPARKMAN. Thank you, Mr. Chairman. I apologize for being a little late. I was attending another committee meeting. I had understood that there was to be a witness ahead of me, but I am very glad to be here and to have this opportunity to present my views to the subcommittee.

I strongly oppose the two bills which are the subject of this hearing, S. 1117 and S. 1219.

The first, S. 1117, would extend the life of the Civil Rights Commission for 4 years. The second, S. 1219, seeks to make this Commission a permanent agency.

If the Commission in its period of existence so far had conducted itself in an impartial manner, perhaps there would be some reason for continuing it. However, such has not been the case.

On the contrary, its history has been one of confusion, one-sided attitudes, and advocacy of illogical courses of action.

Early in its existence, the Commission's pattern for partiality was established. This partiality was strongly evident in the report of the Commission made in 1959.

So lacking in objectivity was the report that it was promptly attacked by a member of the Commission. I refer to the Honorable John S. Battle. He said:

I must strongly disagree with the nature and tenor of the report. In my judgment it is not an impartial factual statement such as I believe to have been the intent of Congress, but rather, in large part, an argument in advocacy of preconceived ideas in the field of race relations.

Battle, a former Governor of Virginia, was perhaps the one person best able to offer an objective evaluation of the 1959 report.

Some may have thought then the Commission, a fledgling establishment just getting its feet on the ground, could perhaps be excused for issuing a biased report against alleged racial bias. But I am sure that both supporters and opponents of the Commission hoped that in time the Commission would mature, that it would become impartial and that perhaps there was a possibility that it might offer something constructive in the field of race relations.

Well, here we are with the Commission nearing 6 years of age and showing about as much judgment as a 6-year-old child.

Nothing emphasizes the Commission's failure to mature more than the infamous interim report issued April 16, 1963.

This report, if translated into medical terms, would, in effect, say that the best way to cure an alleged disease is to kill the patient.

In this report, the Commission alleged that children at the brink of starvation have been deprived of assistance in Mississippi.

Not only did the Commission not attempt to support this allegation in its report, but it also went on to surprise both the Nation and the President by recommending that the President simply deny American citizens in Mississippi the benefits of any Federal programs of assistance to the States.

To quote the Commission's own words, this recommendation should affront "the conscience of the Nation."

The Commission seems to forget that Congress passed the laws applying to grants and loans to the States and that only Congress can change these laws.

At the time this recommendation was made, I publicly stated that the idea of withholding Federal funds was ill conceived and that the recommendation was absolutely absurd.

I said I hoped the executive department would disregard it, that it was completely contrary to the intent of Congress, and that it did not seem to represent clear thinking.

Furthermore, I said that if the recommendations were implemented, the people who would be hurt most by the cutting off of Federal funds for farmers, the aged, dependent children, the school lunch program, and others in Mississippi most likely would be Negroes.

At that time, I noted that I had opposed the Civil Rights Commission from its beginning and I said that its recommendation regarding

Mississippi was a pretty good illustration of why the Commission should not be in existence.

That was my belief in 1957 when the Commission was established by the Congress despite strenuous opposition by many Members of Congress.

My belief has been strengthened each time the Commission has issued a report and each time Congress has considered an extension of the Commission's life.

Today, I believe more strongly than ever that the Commission serves no worthwhile purpose and that it should be allowed to expire.

Approximately 6 years ago, at President Eisenhower's recommendation and over the strong objections of many Senators, and I was one of them, the so-called Civil Rights Act of 1957 was enacted.

In it, the Civil Rights Commission was established to study civil rights for 2 years, make its report to Congress, and then expire. But instead of letting it expire, Congress has extended its life twice. Now we are asked to extend it again, not 2, but for 4 years. Some want to make it permanent. This, I cannot understand.

Senator ERVIN. If I might interrupt you at this point, a witness yesterday recommended that the life of the Commission be extended forever. I asked him if he were willing to have all the other officials of the United States continue in office on the same terms and he said "No."

Senator SPARKMAN. Well, I think that indicates some of the failure of some people really, to think these things through.

Before we ever had a Civil Rights Commission, the Department of Justice had already been given the power to do the things the Civil Rights Commission has been attempting.

Furthermore, I am reliably informed that the Justice Department still has these powers.

Why should Congress appropriate nearly \$1 million yearly to be spent by an agency which, in effect, duplicates the responsibilities already delegated by Congress to the Civil Rights Division of the Justice Department?

Mr. Chairman, at this point, I would like to have inserted in my testimony a 1958-through-1962 comparison of the budgets of the Civil Rights Commission and the Civil Rights Division of the Justice Department.

It is as follows:

	Civil Rights Commission	Civil Rights Division
Fiscal 1958.....		\$148,000
Fiscal 1959.....	\$777,000.....	(¹)
Fiscal 1960.....	\$850,000, Public Law 86-678.....	517,000
Fiscal 1961.....	\$888,000, Public Law 87-264.....	689,000
Fiscal 1962.....	\$950,000, Public Law 87-843.....	768,000

¹ Still part of Criminal Division.

² \$487,850 and \$40,130 (a pay increase).

Senator SPARKMAN. Now, Mr. Chairman, do we need two Civil Rights Divisions in order to placate a certain element in our society which seems to thrive on racial strife and unrest?

What has the Civil Rights Commission accomplished in the field of race relations?

Instead of creating a stable environment for communication between the races, the Commission has created a volatile situation which defeats the very goals which the Commission professes to seek.

For all its declarations of high principle and purpose, we who fought it cautioned that its inevitable results would constitute a threat to the Constitution of the United States.

However, our warnings fell on politically motivated ears and thus went unheeded. Nevertheless, subsequent events have vindicated our judgment.

We have witnessed the Commission's attempts to expand even the great powers granted it by the Congress so as to have sovereign States knuckle under to preconceived notions of the Commission in respect to administration of State laws.

We Southern Senators who opposed the legislation establishing the Civil Rights Commission did so primarily because we had grave misgivings as to such a Commission's usefulness.

We felt then what we know now—that such a Commission was, at the most, an unnecessary adjunct to an already onesided arsenal aimed at situations which people in the areas involved are most able to solve.

We felt then, and we feel now, that this Commission would serve no purpose other than to agitate and inflame relations between the races all over our land.

We suspected then, and we know now, that the activity of this Commission would serve as nothing more than a means by which those happily isolated from the real problems of racial relations might experiment with their own pet theories.

Fortunately, little heed has been given to the completely absurd and ridiculous recommendations of the Commission and its staff.

By its own action, this Commission has proved to be a disruptive force in the very area for which it was proposed to be constructive.

Accordingly, this has been a costly and useless experiment. It should be discontinued and I strongly urge that this committee refuse to recommend continuation of the Commission.

I thank you, Mr. Chairman.

Senator ERVIN. Senator, I have before me an editorial from the Chicago Tribune for April 21, 1963. This editorial makes the following comment with respect to this recent recommendation of the Commission:

If States and cities are financially dependent on the pleasure or displeasure of men in Washington, they are not really self-governing.

Do you have any comment on that statement?

Senator SPARKMAN. Well, I think that is correct. One thing that so many people seem to forget these days is that ours is a dual system of government and that there are rights and responsibilities lodged in the States and in local subdivisions of the States, and if the time ever comes that that is broken down and we have simply a completely centralized government, I think we are in for a bad way.

Senator ERVIN. I have before me an editorial from the New York Times of Friday, April 19, 1963, which has this comment upon the recommendation.

The Civil Rights Commission's recommendation that President Kennedy consider withholding Federal funds from Mississippi in punishment for its mistreatment of Negroes amounts to a proposal to read that State out of the Union.

Do you have any comments on that?

Senator SPARKMAN. I think the comment is justified and it seeks to read it out by executive action whereas the whole program of the Federal-State relations as far as the expenditure of funds, grants, loans, and so forth is a legislative action and I think it is one of the most uncalled-for recommendations that anybody could ever have conceived.

Senator ERVIN. Senator, you have been instrumental in helping enact many of the statutes which make grants to States for various purposes.

Do not those bills established by their provisions the terms and conditions upon which such grants shall be made?

Senator SPARKMAN. Always. I think that is true with every single piece of legislation.

Senator ERVIN. Do any of those bills or any other piece of legislation on the statute books authorize the President of the United States to cut off aid to any State upon any condition other than those specified in the acts?

Senator SPARKMAN. I do not know of any and I do not think Congress would ever pass a law setting up a program that would give the Executive the right to control it absolutely.

This is a legislative matter and not an executive matter.

Senator ERVIN. Does not article I of the Constitution say that all of the legislative power of the Federal Government is vested in the Congress with none whatever in the President?

Senator SPARKMAN. The Senator is correct.

Senator ERVIN. If the President were to assume the power to cut off grants made by Congress upon conditions other than those enacted by Congress, the President would be usurping and exercising the legislative powers which he does not possess, would he not?

Senator SPARKMAN. If he did that of his own accord, he would be usurping the powers, and if Congress gave him that right it would be abrogating its own powers.

Senator ERVIN. Is not the power to condemn and pass sentence upon individuals or groups of individuals a judicial rather than an executive power?

Senator SPARKMAN. The Senator is correct.

Senator ERVIN. Do you think that we are adhering to the due process of law when an individual has been denied notice and a hearing?

Senator SPARKMAN. I certainly do not, and the Senator will recall that it was in connection with that civil rights bill of 1957, one of the questions that was most strongly debated had to do with that and also with the right of trial by jury.

Senator ERVIN. The Washington Post carried an editorial in connection with this proposal which said, in effect, that the recommendation is a drastic and dangerous remedy; and that the elimination of Federal financial support to the State is likely to cause resistance rather than compliance.

Senator SPARKMAN. I agree with that.

Senator ERVIN. The same editorial further points out that a judicial question is involved and that the normal manner of determining it is to have the Department of Justice bring action in the Federal courts.

Senator SPARKMAN. I think that is orderly government as contemplated under the Constitution.

Senator ERVIN. Now I would like to ask the Senator if he is aware that we have a statute embodied in title 18, section 241 of the United States Code which provides that:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured they shall be fined not more than \$5,000 or imprisoned not more than 10 years, or both.

And is the Senator also aware of the fact that there is another statute embodied in title 18, section 242 of the United States Code which reads as follows:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

Does the Senator share my opinion that under those two statutes sufficient criminal punishment can be visited upon any State or local official or any person party to a conspiracy which has within its object the denial of any constitutional right belonging to any citizen?

Senator SPARKMAN. I certainly agree with the Senator, and again I say that it provides the orderly system that was contemplated when our Constitution was written.

In other words, it becomes a matter of handling in the courts in such a way that the person receives due process before he is brought to the bar of justice or any punishment is imposed.

Senator ERVIN. Now I call the Senator's attention to two other statutes: title 42, section 1983 and title 42, section 1985, subsection 3 which provide that "Civil actions, either actions of law or suits in equity, can be brought either to recover damages or to prevent any anticipated denial of any right of any citizen secured by the Constitution and laws of the United States."

Does not the Senator think those two statutes provide sufficient remedy for the private redress or private prevention of public punishment of any person who is denied any right secured to him by the Constitution and laws of the United States because of race or color?

Senator SPARKMAN. I think the Senator has correctly stated the case.

Senator ERVIN. Truthfully, there is not any necessity whatever for enacting any other law for protection of all constitutional rights of all individuals under all circumstances, is there?

Senator SPARKMAN. I think the Senator is right and I repeat something I said in my statement.

Congress has established or has authorized the Attorney General to establish in the Department of Justice a Civil Rights Division and it is functioning and functioning in large part under these acts to see that they are properly carried out and it also performs another function.

The Civil Rights Division has been quite active in trying to bring races together where there is racial disturbance, trying, in many in-

stances, to establish or reestablish communication and we know that in a good many instances it has been effective.

Senator ERVIN. You spoke of some of the recommendations of the Civil Rights Commission for legislation and other governmental action.

One of the recommendations was that every State officer—that is every sheriff, deputy sheriff, police officer, constable, or other State or local officer engaged in the enforcement of the law—who uses unnecessary force to arrest or to detain any person shall be subject to trial in the Federal courts as a common criminal and be punished by fine or imprisonment in case it is found that in the arrest he used unnecessary force.

I will ask the Senator this question. If this statute were passed, would it not place every State and local law enforcement officer in America in this dilemma: if he underestimates the degree of force necessary to enable him to perform an arrest, the criminal might either escape or injure the officer; but if, on the contrary, he overestimates the amount of strength necessary to enable him to perform his duty and overcome forceful resistance or an attack upon himself, then he would be hailed as a common criminal in the Federal courts and prosecuted by the Federal Government which would be allied with the criminal and against the law enforcement officer of the States. Is that not true?

Senator SPARKMAN. I think that is true. Certainly, there is a large element of judgment that any officer must use in the performance of his duties.

May I mention this instance that I just happened to think of as the Senator was framing his question, that you may remember that only within the last month or so there was killed, right here in Washington, a young policeman.

By the way, I believe he was a Negro policeman who had arrested someone on a bus and in taking him off and maybe in making a telephone call, he used too little force and the person who was arrested in some way got ahold of a gun and shot him dead.

Now there is a case where, undoubtedly, the arresting officer minimized in his judgment the amount of force that was required to handle that person sufficiently.

It could go either way.

Furthermore, these matters are covered by State laws and if the action is such as to trespass upon a person's right secured to him under the Constitution there is protection under the statutes that the Senator read just a few minutes ago.

Senator ERVIN. Does not the Senator think that this recommendation indicates that the Civil Rights Commission has perhaps a rather unfortunately low opinion of the character and capacity of State courts and State law enforcement officers, who are charged with enforcing State laws?

Senator SPARKMAN. I do. And I think it has the wrong attitude in assuming that so much power—I was about to say "all power"—emanates from the Central Government when, as a matter of fact, there are two systems of government, a dual system of government.

Senator ERVIN. Now this recommendation doesn't deal with Federal law at all, does it?

Senator SPARKMAN. Not at all.

Senator ERVIN. It deals with the power of a law enforcement officer of a State to take steps to bring before a court a citizen of that State who has violated a law of that State within the borders of that State. Is that not true?

Senator SPARKMAN. The Senator is right, and the only way that the Federal law could come into effect at all would be as I mentioned a few minutes ago, if the person's rights guaranteed to him under the Constitution were violated.

Senator ERVIN. Now I notice also a recommendation of the Civil Rights Commission to the effect that whenever any State or city law officer commits any wrong toward any person which may involve any constitutional right, that the city which employs him or the county which employs him shall be liable in action for damages to the party alleged to have been wronged by the officer.

Does the Senator agree with me that this is a remedy which places the sins of guilt on the innocent?

Senator SPARKMAN. Yes, it brings back to my memory some of the long-drawn-out fights that we had back when the Senator and I both served in the House of Representatives in the fight against an attempt to enact antilynching laws where the State, county, city and just about every group and subdivision was to be heavily punished in the event a lynching occurred anywhere around.

The Senator will remember our argument at the time that lynching was virtually a thing of the past. I do not know how many years it has been now since there has been a lynching and it did not require the enactment of such a law.

I think there is a similarity between the two.

Senator ERVIN. I have a rather vivid recollection of having read in Blackstone's *Commentaries*, that at one time there was an English law holding that when a person was injured in a community, everybody in the community, guilty and innocent alike, had to make repentance. Blackstone said that when mankind became more enlightened and realized that there was something inequitable or unjust about visiting consequences of the sins of the guilty upon the innocent, the English law would be abolished.

I would like to ask the Senator from his vast experience as a private attorney before he came to Congress if the great majority of the work of the police officers in municipalities and law enforcement officers in the counties is not done in the enforcement of laws of the county or town, but rather in the enforcement of the laws of the State.

Senator SPARKMAN. I think that is a safe statement.

Senator ERVIN. So if the officer is acting as an agent for anybody, he is acting as an agent of the State by enforcing its laws, is he not?

Senator SPARKMAN. I think that would be generally true with the exception of traffic officers that operate usually within the city.

Senator ERVIN. And so if we were to adopt the Commission suggestion and make innocent citizens responsible for transgressions of law by our officers, that liability ought to be imposed on the part of the State, should it not?

Senator SPARKMAN. I just think the recommendation is wholly without logic.

I do not think it should be imposed upon any political subdivision.

As a matter of fact, Mr. Chairman, I think it is generally true that law enforcement officers of whatever political organization they may

be working in, political subdivision in the State, or whatever it might be, I think it is generally true that each officer is under a bond for civil damages for any wrong done, and certainly so far as any rights that are assured to the individual under the Constitution there is protection under the statutes that the Senator earlier referred to.

Senator ERVIN. I have read the recommendations of the Commissioners very carefully and it seems to me that if they recommend that the taxpayers at the local level be held responsible for the actions of their officers, they ought to make a like recommendation with reference to a national level; if the municipality should be held responsible for the wrongs of its officer, the Federal Government ought to be made responsible for the wrongs of its officers. If we are going to have sauce for the goose, we ought to have a sauce for the gander as well.

I thank you, Senator. I could proceed for a great while with questions on specific recommendations but I will just ask the Senator if he does not think that it is a fair generalization to say that virtually every recommendation made by the Civil Rights Commission for legislation or Government operation is merely an echo or reecho of recommendations made by different organizations who adhere to the theory that people can legislate a more abundant life and, in order to do this, other people have to be robbed of basic rights.

Senator SPARKMAN. I think that is the general philosophy of it.

I do want to say this, that I have not kept up with every single recommendation that the Commission has made, but I have followed generally their recommendations each time they have come out with a report, and I think many of them show a lack of clear thinking and clear appreciation of the kind of government that we have, the three branches of Government that are coordinate, but separate, and the dual system of government that we have as between the Federal Government and the State governments.

Senator ERVIN. Senator Keating?

Senator KEATING. Senator Sparkman, it is not my expectation that I would be able in any way to change the views of yourself or our distinguished chairman, both of whose views in this entire field are quite different from mine. But I would like to get your testimony in respect to this.

I was unfortunately a little late and did not hear the first part of your testimony. But do you feel it is necessary to agree with the recommendations of the Commission in order to favor the extension of the life of the Commission?

Senator SPARKMAN. No, I would not argue that to be true at all. I have differed many times with many things that have been brought up that have been done by the departments, agencies of the Government and yet, gone right on supporting them with appropriations and legislation that was needed.

But looking at this as a whole, I do not believe it has justified its continuation and I pointed out probably before the Senator was able to get here that it was set up originally for a 2-year operation.

That was clearly the intent when it was set up in 1957. It was set up to make a study and make a report and to wind up its business.

Now it has been extended 6 years, and there is the request before the committee now to extend it for 4 more years, and another request to place it on a permanent basis.

May I call attention of the Senator from New York to this also, that I pointed out that it is clearly a duplication of something that Congress has authorized and that is the Division of Civil Rights within the Department of Justice. We do not need two operating in the same field.

Senator KEATING. Well, the history of it in the past is that it has not duplicated, in my judgment, the work of the enforcement agency.

This is a factfinding agency without enforcement powers.

I want to ask the Senator a question about the request in the Commission report that both the Congress and the President consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State that continues to refuse to abide by the Constitution and laws of the United States.

Would you consider that it was improper for the executive and the legislative branches to consider seriously whether such legislation was appropriate and desirable?

Senator SPARKMAN. Well, of course, that term "consider" has different connotations.

I remember back in the days of 1949, 1950, 1951 in the MacArthur hearings in the early part of 1951, the question was asked of high officials of the Government, particularly the Secretary of State if we had ever considered recognition of Red China.

That became a hotly debated question thereafter.

Well, of course, if "consider" just means think about, that is one thing. If "consider" means consider it within an idea, think of it with an idea that it ought to be done, that is another thing.

Naturally, anybody can think about anything he wants to and give consideration to it, but I think that the recommendation was completely uncalled for. I think it was ridiculous and certainly, the President, as I pointed out, does not have the power to do the things that they suggested and in his news conference right after that, the President said that he did not have the power. And furthermore, he did not think that the President should be given such powers.

I agree with that statement.

Senator KEATING. Do you think that Federal funds contributed by citizens of all the States should be made available to a State which continues to refuse to abide by the Constitution and laws of the United States?

Senator SPARKMAN. I think the funds that are made available in the form of loans, grants, aid, assistance from the Federal Government should be administered in the manner in which Congress directs them to be.

Senator KEATING. Well, I presume that is as close as I will get to it.

Senator SPARKMAN. I do not see how you can get any closer.

I think this may have been before the Senator came in.

Senator KEATING. I would appreciate a direct answer, but I would not press the Senator.

Senator SPARKMAN. Well, it is up to Congress to decide those things, and I stated a while ago that Congress had never enacted a law that gave the President the power to cut off funds and it provided in a manner in which the funds should be made available and

I believe that those provisions written into it by Congress should be carried out.

Apparently that was the President's attitude, too.

Senator KEATING. My question, of course, bore upon your views as a Member of Congress.

Senator SPARKMAN. We have differences between States. I remember, for instance, several years ago the State of Indiana refused to set up one of the programs under the social security law. I think it was the Social Security itself and funds were withheld for a time. I think there was a great stir. It was worked out satisfactorily. However, that was done under the provisions established by congressional enactment—in other words, requiring the submission of a plan that was approved by the Agency that would dispense the funds.

Now, I do not think any State is going to get into a position where there is always going to be a state of revolt or state of rebellion. Things can be worked out and they usually are worked out.

We have a dual system of Government and there ought to be a recognition as between the two of the powers that belong to each other and those powers ought to be respected.

Senator KEATING. My interest is primarily in the next sentence of this report.

My feeling is there has been wide misapprehension as to what the Commission intended to mean by it. It said:

We urgently request that the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States.

I take it from your testimony that you interpret that as being a recommendation that the President explore the authority to withhold all Federal funds for every conceivable purpose from the State of Mississippi until the State of Mississippi had demonstrated that it was going to pay attention to the laws and Constitution of the United States.

Senator SPARKMAN. Yes, I don't think there was any separation, if the Senator is talking about the different funds.

I do not think there was any separation in the report at all, and I believe that that was the general interpretation given to it by the President of the country and the news commentators at the time, and the editorial writers.

I might say the chairman cited several editorials from such papers as the New York Times, the Chicago Tribune, the Washington Post, and others that in my interpretation condemned this suggestion.

Senator KEATING. I think the Senator has some justification for that statement.

I think there were such editorials in eminent journals such as the New York Times and the Washington Post, Washington Star, and others and there was such interpretation put upon this language.

We will have the privilege of hearing today from one of the authors of the document, Dean Griswold, of Harvard Law School, and perhaps some of the other eminent members of the Commission.

I did not then, and I do not now interpret that was the meaning of this sentence. I believe that the acceptance of that meaning was

without foundation, but perhaps I am misinformed. I do not read it that way.

Senator SPARKMAN. May I say that apparently the press generally accepted that viewpoint and apparently the President did not dissent from that interpretation because when the question was put to him in the news conference right after the report came out, he answered quite pointedly that he did not feel that he had such powers and, furthermore, did not feel that any President should have such powers, and I agreed with his reasoning.

Senator KEATING. It is possible the President read the press reports rather than the Commission's report.

Senator SPARKMAN. Of course, that is true with a lot of us. We rely very heavily on the press to dig into these reports.

Senator ERVIN. Will the Senator yield?

Senator KEATING. Yes.

Senator ERVIN. The Senator suggests that your interpretation and mine, and that of the President, the Washington Post, the New York Times, the Los Angeles papers, and others, is not correct.

It reminds me of the time over in the South Mountains in my county when this mountain church fired a preacher and the preacher was outraged by his dismissal. So he asked for and was given a conference with the chairman of the board of deacons.

The preacher said to the chairman of the board of deacons, "I want to find out why you fired me.

The chairman said, "Because of the way you preached."

The preacher said, "Well, don't I argify?"

He said, "You sure does argify."

He said, "Don't I disputify?"

The chairman says, "You sure do disputify."

The preacher said, "What's the trouble?"

The chairman of the board of deacons says, "You don't show where in."

I would like to have the Senator from New York show me "wherein" there is any differentiation at all in this document.

Senator SPARKMAN. May I add this comment. If it made a statement that was so broadly misinterpreted and if that is not its meaning, it shows the rather hasty and, I think, ill-considered action on the part of the Commission.

Senator KEATING. The interpretation which I put on it when I first read it and still do, is that it was not intended to say that if a library in Mississippi is segregated and does not admit Negro readers, that the President should explore his authority to see if he can cut off funds under the Hill-Burton Act for hospital construction. It would seem to me to be a reasonable interpretation to say that the President should explore the legal authority he possesses as Chief Executive to withhold Federal funds in the State of Mississippi in the areas where the State of Mississippi was defying the Constitution.

Senator SPARKMAN. Those are your words.

Senator KEATING. Yes, and I would think that was a reasonable construction of the report.

Senator SPARKMAN. I do not think that is what it says. It says "withhold funds."

Senator KEATING. We will never be in agreement in that regard, no doubt, but I wanted the record clear as to what the real meaning of the Commission was with regard to this matter in my judgment.

I was rather dismayed by the rather wide misinterpretation of the report and I think we will be enlightened by hearing some of the members of the Commission with regard to the meaning which they intended to convey. That is all.

Senator ERVIN. If I may ask one question here. Does this document not amount to a judgment against Mississippi by the Commission and does it not reflect an unmistakable desire on the part of the Commission that either the President or Congress cut off all aid to Mississippi on the basis of the condemnation of Mississippi by the Commission?

Senator SPARKMAN. I think so.

Senator ERVIN. Does the Senator know of anything in the Constitution or anything in our laws relating to the Commission which gives the Commission final authority to convict a State of a violation of the Constitution as a basis for action by the President?

Senator SPARKMAN. I certainly do not.

Senator KEATING. Could I ask a question?

Does the Senator know of any reason why, if the President took action which was not within the laws and Constitution, the State of Mississippi could not bring a proceeding in court to enjoin him from that action?

Senator SPARKMAN. No, I think the State of Mississippi could in that case, but I would hate to think that any President of the United States, regardless of who he is, would take such action or assume that he had the right to do it.

Senator KEATING. Well, Presidents of the United States frequently, in perfectly good faith, have taken action which courts have later said was erroneous.

Senator SPARKMAN. But there is such a complete lack of power for this kind of action, as President Kennedy so well stated.

Senator KEATING. That is a matter of opinion.

Senator SPARKMAN. He did not stammer over it. He stated it right off.

Senator KEATING. The attempt has been to create an impression here that this Commission has sought to put an untrammelled power in the hands of the Chief Executive to act in place of the judiciary. There is no warrant for that whatever in the Commission's report.

It is always available to an aggrieved State to go into court to review the action of a Chief Executive or a legislative body and there is nothing in this report which in any way interferes with that right.

Certainly, I would not favor a proceeding which required the great Federal Government to go into court and say, "Please, Mr. Judge, may we enforce the law of our country."

It is one way or the other: Either the Federal Government must go into court before the Chief Executive does anything, or the Federal Government can empower the Chief Executive to act, and when he acts, then if he acts wrongly and he might act in an improper manner, then that is reviewable in court.

Senator SPARKMAN. Well, it is not a question as I see it of there being something that is subject to interpretation as to whether the President can do it or not do it.

There is nothing here. It is void. It is not a question of the Government going into court to enforce a power or even to question whether or not he has the power.

There is simply nothing to which they can point as I see it, that gives the President that power and the President said so in his news conference that he did not have the power and did not think any President ought to have the power.

I agree with him in his statement.

Senator ERVIN. Does not the Senator think that the question of whether anybody has violated the Constitution is a judicial question?

Senator SPARKMAN. Yes.

Senator ERVIN. Does not the Senator think it would be the worst form of governmental tyranny for the Government not to have to go into court to prove its case before an individual is punished?

Senator SPARKMAN. You know, I think under our Constitution we have a fine governmental setup. I believe in the separation of powers as provided by the Constitution.

I believe in the dual system of government, and I should hate to see anything happen or I should hate to see Congress give its stamp of approval to anything that might break down either one of those.

Senator BAYH. Mr. Chairman, I have a great deal of respect for my colleague. We may not share views on this particular subject. I think that some of the discussion we have heard here about the interpretation of the statement of the Commission can best be answered by some of the other witnesses and I, for one, would like to have a chance to hear their testimony.

However, I think that some of the questions that have passed back and forth here are rather moot because no matter what appears in the report of the Commission, they do not have adjudicative power or legislative power and the recent statement by the President showed that he was going to consider the report of the Commission and make a final judgment as to what his powers were and really, the only purpose of the Commission is as a factfinding agency as the Senator from New York stated.

It has disclosed situations in the southern areas and my State and other States around this country where we have instances of discrimination, purely not racial discrimination and that is the reason I favor the Commission because there is a job to do all over America and this is a factfinding body.

Then it comes to the legislature and we have the final say as to whether we will accept the recommendation.

I am not posing this as a question, Senator.

Senator SPARKMAN. I think the Senator is correct, that it is a fact-finding, supposed to be a factfinding body and is supposed to make recommendations in connection with its findings.

I think it ought to be careful in the recommendations it makes and I think some of the recommendations during its 6 years of life have been just absolutely absurd and not really based on valid findings.

Senator BAYH. I would like to hear the interpretation of the Commission as to that.

Senator SPARKMAN. Undoubtedly, you will have some of them. I realize that. I wish I could stay and hear them, but as it happens, I have committees of my own that are meeting.

Senator ERVIN. Does not the Senator think it is relevant for Congress to consider the character of the recommendations that the Civil Rights Commission has made in determining whether Congress should continue its existence for the purpose of receiving other recommendations from it?

Senator SPARKMAN. I surely do, and I repeat what I have said a couple of times already. This was set up originally as a 2-year operation. It was supposed to make its study, do its factfinding, make its report, and close the books in 2 years.

We have had it in existence for 6 years, and certainly, Congress has the right and the responsibility to consider the nature of its work in deciding whether or not it shall be continued, and if so, for how long a time.

Senator BAYH. Mr. Chairman, I would like to agree with Senator Sparkman and the chairman that we should consider recommendations, but I would like also to point out that in the Senator from Alabama's previous statement, he did not believe and I do not believe a total agreement with recommendations is the criteria for continuance of any commission.

Senator SPARKMAN. No, I made that statement myself. Lots of times I have disagreed with some agency of the Government, but I have continued to support that agency.

But I think that the general overall pattern of work done by the Commission and the fact that it was set up originally as a 2-year proposition, these things should be considered in deciding whether or not it should be continued.

Senator KEATING. The Senator has stressed the fact that this was a temporary Commission.

Does the Senator feel that there is a less need for factfinding in this sensitive area today than there was at the time this Commission was created 2 years ago?

Senator SPARKMAN. No; I do not think I would argue that to be true.

I made it clear that I opposed the setting up of the Commission in the beginning. I have felt that it, as I have said here a couple of times already, that it duplicates in a great degree the work of the Division of Civil Rights in the Department of Justice.

Certainly, they can do all the factfinding that needs to be done and they can apply their facts to the law that is on the statute books that the Department of Justice has the responsibility for enforcing and seeing it is carried out.

Senator KEATING. They cannot enforce laws the Congress has not enacted.

One of the main purposes of the Civil Rights Commission is to bring out these facts, not only for the country but for the legislative branch so they can legislate.

Senator SPARKMAN. Well, the Civil Rights Division in the Department of Justice can do exactly the same thing and make its recommendations to the Congress of the United States and it does do it.

Senator KEATING. My feeling is that there is probably a greater need, despite the fine work of the Commission, a greater need for calm, dispassionate investigation into this sensitive, and in some areas, tragic field today than there was when this Commission was created, and particularly when it is manned by such eminent men as the members of this Commission drawn from not only both of the great political parties but all sections and areas of the country and when, in so many instances as here, they have arrived at unanimity in making their recommendations.

It seems to me they have conducted themselves with great restraint and have performed a very useful service and that the life of this Commission should be extended.

Senator ERVIN. Thank you, Senator.

Senator SPARKMAN. Thank you, Mr. Chairman, and gentlemen of the committee.

Mr. CREECH. Mr. Chairman, the next witness is Mr. Berl I. Bernhard, staff director, U.S. Commission on Civil Rights who will be accompanied by a member of the Commission, Dean Erwin N. Griswold, of the Harvard Law School.

STATEMENT OF BERL I. BERNHARD, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS; ACCOMPANIED BY ERWIN N. GRISWOLD, MEMBER OF THE COMMISSION, AND DEAN OF THE HARVARD UNIVERSITY LAW SCHOOL

Mr. BERNHARD. Mr. Chairman and members of the Subcommittee, I am Berl I. Bernhard, staff director of the U.S. Commission on Civil Rights. The Commission appreciates this opportunity to present its views on legislation which would extend the life of the Commission and revise its functions.

President Kennedy, in his civil rights message to the Congress of February 28 spelled out in some detail the views of his administration on the present role of the Commission and how the agency's functions should be revised to meet current needs in the field of civil rights. Senator Hart, with bipartisan support, has submitted a bill, S. 1117, to implement the President's proposals. The Commission is in accord both with the President's assessment of the role of our agency in civil rights developments and with the specific legislation which has been introduced to carry out the President's recommendations.

The Commission on Civil Rights has been in operation for more than 5 years. During this time, it has held hearings, investigated complaints, and ascertained the extent of progress in securing constitutional rights in all sections of the Nation. Major voting hearings were held in Montgomery, Ala., in 1958 and in New Orleans, La., in 1961. Hearings on the status of equal protection of the laws have been held in all regions of the Nation, including New York, Chicago, Detroit, Atlanta, San Francisco, Los Angeles, Phoenix, Memphis, Washington, D.C., Newark, and Indianapolis.

These investigations have led to reports on deprivations of the right to vote and on denials of equal protection of the laws in education, employment, housing and the administration of justice. Currently, in addition to the subjects mentioned, we are preparing reports on the status of equal opportunity in the Armed Forces, on the access of minority groups to hospital facilities constructed under the Hill-Burton Act, on the civil rights of Spanish-speaking Americans, and on the state of constitutional guarantees in Mississippi. The Commission's past reports have culminated in a series of recommendations, a number of which have been acted upon by the President and the Congress.

Many areas remain to be investigated fully. This will always be the case. But it is appropriate to ask at this juncture whether the major need is now for more facts or for constructive action based upon the facts known. The Commission is satisfied that the facts it has

already uncovered and reported concerning denials of equal protection and voting rights provide an ample basis for considered Federal action.

Thus, it seems to us that the major question before Congress is whether the Commission's factfinding role can be redefined in a manner which will permit it to perform a service of continuing significance and benefit to the Nation. In his message, the President said that, "as more communities evidence a willingness to face frankly their problems of racial discrimination, there is an increasing need for expert guidance and assistance in devising workable programs for civil rights progress." The need, the President said, is for information about the methods by which these problems have been solved in the past, for a forum to open channels of communication between contending parties, and for an agency able to give the kind of advice and assistance which will contribute to peaceful and permanent solutions to racial problems.

The Commission's experience bears out this analysis. In the years we have been in operation there has been an increasing demand for information concerning the status of civil rights. Commission reports are widely distributed to Federal, State and local officials, educational institutions and members of the public. At the same time, the staff receives a large volume of specific requests for information from Congress and the public, and from agencies and individuals who have professional responsibilities in the field of civil rights.

At our annual education conferences, held for the purpose of gathering facts, we have discovered that there is little direct communication between educators in various parts of the Nation about the means employed in each community for complying with the mandate of the Supreme Court in the *School Segregation* cases. These conferences have had the collateral effect of providing a forum in which educators can share their experiences with desegregation and exchange information and advice. Our 51 advisory committees, established for the purpose of gathering facts for the Commission, have found a similar need for communication at the local level. Their surveys and meetings have encouraged the solution of civil rights problems through State and community action.

Thus, the Commission already performs a limited service of providing information to Government agencies, organizations, and individuals in dealing with civil rights problems. The difficulty is that as long as these efforts are necessarily subordinate to the performance of the factfinding and reporting function of the Commission, a function mandated by law, only a very small part of the Commission's resources can be devoted to them. S. 1117 would add information and assistance to the specific duties of the Commission and would enable the Agency to concentrate its operations upon those areas which most need attention.

And the need for assigning to some Federal agency the responsibility of providing information and assistance is increasing. The President pointed out in his civil rights message, that the Commission, "has advised the executive branch not only about desirable policy but about administrative techniques needed to make these changes effective." In many areas of Federal programs, the problem has not been the absence of policy so much as difficulties in implementing adequately rules and regulations requiring nondiscrimination.

The Commission has recommended in several of its reports on education, employment, and housing, that the Federal Government obtain assurances that its funds will be expended only for nondiscriminatory purposes. Such recommendations are best implemented by establishing appropriate machinery within the executive branch for securing and supervising agreements that Federal money will be expended for the benefit of all citizens without regard to race. When this is done, experience has demonstrated that Federal funds are distributed on an equitable basis without impairing the operation of the program. As policy has developed in the area of Federal operations there has been a growing need for advice from a competent source on the substance and administration of Federal civil rights requirements.

Similar needs for assistance exist on the State and local levels. In the North, there are increasing demands for governmental action to deal with school segregation, racial housing practices, and discrimination in employment. State and local governments are seeking information and guidance in drafting ordinances and adopting effective policies to deal with these problems.

There have been developments along the same lines in the Border States and in some parts of the South. It is noteworthy that in recent months, the city of Richmond, Va., has taken action to establish equal opportunity in municipal employment and the State of Kentucky, through its Governor, has adopted a comprehensive fair practices code covering many aspects of civil rights.

In areas where no formal governmental machinery has been established, there may be an even greater need for Federal assistance, so that racial disputes can be resolved in a rational and peaceful manner, rather than through violence. For example, the continuing protest against exclusion of Negro citizens from public facilities suggests the desirability of a forum for representatives of business, civil rights organizations, and Government to seek means for implementing a policy of equal access to such facilities. As more employers and unions turn their attention to the need for developing merit hiring and training programs, they find a need for advice and assistance. And community organizations in many localities are just beginning to come to grips with the question of how to afford equal access to housing without suffering the upheaval of stable neighborhoods which frequently occurs when real estate speculators are permitted to purvey misinformation and stimulate panic.

Thus, in our judgment, the facts more than warrant the establishment of an agency "to serve as a national clearinghouse for information, and provide advice and technical assistance" in respect to equal protection of the laws. Such an agency would bring facts and analysis to bear upon an area where misinformation and misunderstanding too often breed fear and hatred. It would marshal the constructive resources of Government in areas where too often the only alternative have been Government sanctions or private conflict.

If the Commission were authorized to perform this function, we concur with the President's suggestion that the agency be placed "on a fairly stable and permanent basis." The Commission's operations would be strengthened, and made more efficient and more effective if it were granted a longer term. I have found it difficult to recruit, train, and retain personnel in the face of the prospect that the agency will shortly cease to exist. This uncertainty has also made more

difficult the process of establishing priorities and planning long-range studies. And the phasing-out and reduction of staff operations required of an agency scheduled to go out of business is a wasteful process if the agency is then extended and must regroup and secure a new staff.

Congress would not relinquish control over the Commission by extending it for a term longer than 2 years. The agency would still be subject to a yearly review of its operations when Congress passes upon its appropriations and it could still be terminated at any time.

The President has suggested an extension of at least 4 years. Senator Saltonstall's bill, S. 1219, would place the Commission on a permanent basis.

We think that an extension for a minimum of 4 years would provide sufficient assurance of continuity for the Commission to plan its operations on a sound and efficient basis. The precise length of the term is obviously a matter within the sound discretion of the Congress.

There are also a number of technical changes in Commission procedures embodied in S. 1117. These are summarized and explained in a memorandum which we shall submit with the permission of the committee.

In summary, Mr. Chairman, the Commission believes there is genuine need for an agency to provide information, advice, and assistance in the solution of civil rights problems. Such an agency should have sufficient continuity to enable it to perform those services effectively.

If Congress deems the Commission the appropriate body to perform these functions, we would carry out the new mandate to the best of our ability. It is clear to us that the availability of these services would constitute an affirmative and constructive contribution toward attaining the goal of justice and equal opportunity under law.

Senator ERVIN. Senator Bayh, you have to leave soon. Did you have any questions?

Senator BAYH. I must go and as much as I would like to ask questions I feel certain that these distinguished colleagues of mine will give them plenty of opportunity to discuss the matter.

Senator ERVIN. We will ask all the pertinent and impertinent questions.

Senator BAYH. I do appreciate your offer, but I do not have time to get started.

Senator KEATING. There has been a great deal of discussion of the most recent interim report of the Commission on Civil Rights.

I would appreciate if either you or Dean Griswold would enlighten us as to what you intended to convey to the public and to the Congress with regard to the power of the President to insist upon a policy of nondiscrimination in the use of Federal funds.

Mr. BERNHARD. Senator Keating, I think it would be preferable to have Dean Griswold initiate some comments on that and I may wish to add something later.

Senator KEATING. I would appreciate his doing so.

Mr. GRISWOLD. Well, Senator, I would like to begin by saying that I am here in a sense in two capacities. As a member of the Commission, I and my fellow Commissioners are at the service of the President and the Congress.

If it is the judgment of the President and the Congress that the life of the Commission should be extended, we are prepared to carry out the duties which are assigned to us.

But the question of extension is, in our judgment, not one for the Commission but is one for the Congress to make.

As a citizen, I favor the extension of the Commission. I believe that it has been useful. I believe that it should be extended for at least 4 years, and I would be glad to see it extended for a longer period for the reasons summarized by Mr. Bernhard which are that it is extremely difficult to operate efficiently on a basis of 2-year extensions.

For example, we have here today Mr. Bernhard, Mr. Taylor, Mr. Ferguson, and Mr. Rogerson; all able and valued employees of the Commission and no one of whom knows he has a job after next October, all of whom are subject to attractive offers from other agencies of the Government and elsewhere; all of whom have families and so they have to think of the type of work that they ought to be doing, and as a member of the Commission I find it very difficult to feel that these fine, able public servants should be subject to that uncertainty.

It seems to me that they should have an opportunity to know that the Commission will continue in existence for a substantial period of time.

In addition to that, there are all the problems of budgeting, phasing out, and planning programs which are very difficult to carry out on a 2-year basis.

I would hope, therefore, that if the Congress decides to extend the Commission, that it would do it for 4 years.

It seems to me that a very good case can be made for saying it should be made what is called a permanent Commission which, of course, would remain fully subject to the control of the Congress and Congress could terminate it at any time by enacting appropriate legislation.

The Federal Trade Commission and the Interstate Commerce Commission and many other agencies do not live from 2 years to the next 2 years, and are able to set themselves up more efficiently than this Commission can do under the 2-year extension system.

Now, with respect to the report which the Commission made in April on Mississippi, there is no doubt that that has been widely misunderstood.

Whether the fault is the fault of the Commission or the fault of the commentators who perhaps did not read the report of the Commission as carefully as they should have, I do not know.

Senator KEATING. May I interrupt to say as dean of the law school which I am proud to be able to have survived from, I was complimented by my fellow inmate of that institution, the chairman of this committee, by saying that it would have been better if I had written this report, and I said these were very distinguished lawyers and I had no difficulty in understanding what they are trying to get at. They could have lengthened their report, but I had waited for the moment when we could have an explanation of what you feel the Commission had in mind.

Mr. GRISWOLD. Well, the Commission unanimously joined in the report and I have no doubt what each member of the Commission intended by the report and which has been suggested by Senator Keating—

Senator ERVIN. Pardon me, but I would like to interrupt here. I do not accuse you of writing this report.

Mr. GRISWOLD. I had as much to do with it as the other members of the Commission. It is always a problem as to any joint product who writes the particular parts in it.

But I saw the text of this before it was agreed upon by the Commission. It was then tentatively agreed upon by the Commissioners and circulated for improvement in detail, in wording.

I did not foresee the way in which it was misunderstood. I now think that perhaps I should have, although it isn't always easy to foresee all the misunderstandings that people may have. It still remains clear to me what I and the other Commissioners intended, and I believe that is what the report says, if one will simply read the report, although I think one has to read it, too, with an attention to the words which is perhaps a little greater than sometimes is given in rushing through a public document.

Senator ERVIN. I might make a little observation. I am a country lawyer, and accustomed to speaking extemporaneously. When I first came to the Senate, all my brethren read manuscripts. I asked them why they did this and they said they thought that otherwise they would be misquoted. I thought a written statement could be misconstrued just as easily.

I would just as soon be misquoted as I would be to be misconstrued, and I realize there is always that possibility.

Mr. GRISWOLD. Well, the Commission has, to some extent, been misquoted by leaving out an essential part of the statement and it has been widely misconstrued.

I would like to point out in the first place that the Commission made three recommendations. No one pays any attention to anything except the third recommendation which is the one which is misconstrued.

The first recommendation was that the President formally reiterate his concern over the Mississippi situation by requesting all persons in that State to join in protecting the rights of the U.S. citizens, and in accordance with his duty to take care that the laws be faithfully executed by directing them to comply with the Constitution and laws of the United States.

Now, the President has not done that, as far as I know, with respect to Mississippi, but as I understand it, that is exactly what he has recently done with respect to the State of Alabama. Whether the Commission's recommendation had anything to do with the President's action with respect to Alabama, I don't know, but this is exactly the type of action by the President which the Commission was recommending. And second, the President continue and strengthen his administration's effort to suppress existing lawlessness, and provide Federal protection to citizens in the exercise of their basic constitutional rights. This also is exactly what the President has done with respect to the State of Alabama. And finally, you come to the third recommendation, and I call to the attention of the subcommittee that the Commission is under a statutory duty to report to the President and Congress and to make recommendation.

The Commission was not acting officiously in this matter; it confined itself to the duty which has been imposed upon it by an act of Congress to report and make recommendations and it did report to the President and to the Congress, that the Congress and the President

consider—now, “consider” obviously means that you weigh the pros and cons, you examine, you investigate—consider seriously, whether legislation is appropriate and desirable to be sure that Federal funds, contributed by citizens of all States, will not be made available to any State which refuses to abide by the Constitution and the laws of the United States; and that involved a consideration of the nature of the expenditures to be made in Mississippi. And, of course, the Commission did not recommend that funds be cut off from school lunches, or from impecunious mothers, or children, or the blind, or other people for whom Federal funds are to be made available under acts of Congress.

The whole connotation of that word “consider” in the minds of the Commission was that each situation should be separately examined and evaluated, and to the extent that Federal funds are being used, and it is the view of the Commission that they are being used in Mississippi, to enhance, and support and carry forward discriminatory activities, that the President and the Congress should consider whether such use of funds should not be restricted or curtailed. And similarly, the further recommendation was that the President explore the legal authority he possesses as Chief Executive, to withhold Federal funds from the State of Mississippi. I think if we had only underlined those words “consider” and “explore” that the report might not have been so widely misunderstood.

We went ahead to give a specific illustration of what we had in mind. With respect to Federal payments which are currently being made for the construction of an airport building in Jackson, Miss., the plans for which call for separate restrooms and separate restaurants, we find it very difficult to see why the Federal Government in 1963 should be paying money into the State of Mississippi for the construction of a building which provides for separate restrooms and separate restaurants. And we have no doubt that a careful exploration and consideration of other expenditures being made in the State of Mississippi will show similar instances where funds provided by the Federal Government are being used in a clearly discriminatory manner. Our recommendation was that, with respect to such situations, the matter be considered by the President and Congress, and that the President explore his powers to deal with them, and I must confess that I still find no reason to object to that recommendation as made; although I quite agree that if the recommendation had been what the President and many people have contended: namely, that all Federal funds simply be cut off without warning in Mississippi, that it would have been an unwise and undesirable recommendation.

Senator KEATING. May I just say that without any prior consultation with the dean, and the distinguished witness before us—I reached exactly the same conclusion. I commend the Commission for their finding. I regret that I have to be on the floor, and I cannot hear the cross-examination of the present dean, by a former Harvard Law School scholar.

Senator ERVIN. Dean Griswold, would it not follow as the inevitable conclusion of this document, that the Commission itself thought that the President should cut off the funds if the President had the legal authority to do so?

Mr. GRISWOLD. Not indiscriminately, Senator.

Senator ERVIN. Well, is there anything that makes a distinction between funds for one purpose and for another?

Mr. GRISWOLD. Yes; that the President explore his authority, and his authority, it seems to me, might well be different where the funds are being used in a discriminatory manner in Mississippi, than it would be in a case where they were not being used in a discriminatory manner in Mississippi.

Senator ERVIN. Now, it says that the President explore the legal authority he possesses as Chief Executive, to withhold Federal funds from the State of Mississippi, until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States.

Now, first, that statement assumes to adjudicate that Mississippi does not comply with the Constitution and the laws of the United States; and, secondly, it implies Federal funds in the aggregate. I can see nothing there that is susceptible of interpretation to the contrary. The Federal funds are spoken of in the aggregate.

Mr. GRISWOLD. I agree, Senator, that it could have been put clearer. One often, by the benefit of hindsight, can do things better than he did. In the minds of the Commission, the crucial words there were "consider" and "explore."

We were trying not to write a document so long that it could not and would not be read. Indeed, the document as it is, is apparently so long that very few people have read it carefully and a great many people have, in my judgment, made sweeping comments on it, without having read it at all.

Senator ERVIN. Well, Dean

Mr. GRISWOLD. I would like to make it plain, Senator, that I am not referring to you.

Senator ERVIN. I must say, Dean, that I read this document at least 25 times, and it left me with the conviction that the Civil Rights Commission was of the opinion that the President should cut off all Federal grants to Mississippi.

I see no attempt at distinction in the report. The discussion was about Federal funds in the aggregate, and I think my position is fortified by reading page 4, which I believe follows the recommendations. The Commission calls attention to the fact that the people in Mississippi only paid to the Federal Government \$270 million in 1962; it then points out that they received \$650 million from grants-in-aid from other States and the Corps of Engineers construction contracts. Then it refers to benefits they get from area redevelopment loans, small-business loans, accelerated public works projects, and Federal agency grants. Then it says:

Massive assistance to the economy of Mississippi has continued past the time when the State placed itself in direct defiance of the Constitution, of the Federal court orders. For example, the National Aeronautics and Space Agency is proceeding with plans to build a \$400 million moon rocket test facility in Pearl River, Hancock County, Miss.

Now, I interpret that statement to be evidence of a conviction on the part of the Civil Rights Commission that Mississippi should not be allowed to continue to receive these Federal benefits, and if that is not the view of the Commission, I would like to be apprised of it.

In other words, I believe the Commission felt that until Mississippi officials changed their ways Mississippi should not even be permitted to

have a plant that was to be used to assist the United States in exploring the moon.

Mr. GRISWOLD. Well, Senator, I think we can put it this way: If on careful exploration of every available site in the United States, it was determined by the Executive authority, which I assume has the power to make that determination, that a site in Mississippi was superior to any other available site anywhere in the United States, then I think it would be the view of the Commission that that site should be used but if on investigation of the available sites, there turned out to be three, four, five, one in Texas; one in Nevada; one in North Carolina; one in Mississippi; all of which were equally desirable or some of which had advantages which the others did not have, and the Executive authority was required to make a choice in that matter, I think it was the position of the Commission that this fact, that Mississippi is not complying, in the judgment of the Commission, with the Constitution and laws of the United States, should be taken into account in determining whether that site should be located in Mississippi.

Senator ERVIN. Well, at the time the Commission came to that conclusion, the Commission knew, did it not, that this plant was being built, was to be operated under the supervision of the U.S. Government, and that the operation was to be under regulations which required nondiscrimination in hiring and everything else?

Mr. GRISWOLD. It is more complicated than that, Senator. The hiring will be done through employment services which are operated by the State of Mississippi on a discriminatory basis. The people who work on the place will be housed in a discriminatory basis. Their children will go to school in segregated schools.

These things are not directly under the control of the agency which is building and establishing the facility in the State.

And I could mention a great many others, of course. Hospitals.

Senator ERVIN. Dean, don't you know that all the activities to be carried on at that particular installation would be subject to the supervision of the Commission on nondiscriminatory housing, headed by the former Governor of Pennsylvania, David L. Lawrence, and the Commission on Fair Employment Opportunities headed by the Vice President?

Mr. GRISWOLD. There won't be housing on the facility which is available, and the housing available in the community in Mississippi will be, in the judgment of the Commission, highly segregated.

Senator ERVIN. In other words, the Commission feels that coercive power should be exercised by the Federal Government in order to determine where people in Mississippi will reside?

Mr. GRISWOLD. The Commission believes that the Constitution of the United States is in full force and effect in the State of Mississippi, as it is in North Carolina and Massachusetts, and that it should be complied with and enforced in the State of Mississippi, by State and Federal officials.

Senator ERVIN. Dean, will you point out to me then, a provision in the Constitution that confers upon the Federal Government, any power to determine where people should live?

Mr. GRISWOLD. The 14th amendment, sir.

Senator ERVIN. What in the 14th amendment indicates this?

Mr. GRISWOLD. No State shall deprive any person of life, liberty, or property without due process of law; nor shall any State deprive

any person of the equal protection of the laws, and section 5 expressly gives Congress the power to enforce that amendment.

Senator ERVIN. Yes, but is there any law in the State of Mississippi, which undertakes to specify what houses people will occupy?

Mr. GRISWOLD. The problems of people in Mississippi, who seek to live in areas other than those to which they are assigned, are very serious, as I think the Senator will agree.

Senator ERVIN. But I asked the question whether there was a law in the State of Mississippi which states where people should live.

Mr. GRISWOLD. Senator, I don't know whether there is one now. I know there has been one, and if it was repealed, it was perhaps a strategic repeal.

Senator ERVIN. Does the Civil Rights Commission think that the State is to be charged with the attitudes of individuals in the community where there is no State action and no State law?

Mr. GRISWOLD. Well, that is a problem, Senator. I think the Civil Rights Commission feels a concern for the problems of education of people throughout the United States, because the Commission is fully aware of the fact that these problems are not confined to Mississippi or the South and are present in all parts of the United States. The Commission has held hearings in many Northern States, and has undertaken to help the people in those communities to understand what the problems are in those communities.

Senator ERVIN. But the Commission has not yet made any statement that could be interpreted to the effect that any State except Mississippi should be denied the benefit of the Federal grants which are given to all other States of the Union.

Mr. GRISWOLD. I think, Senator, that the Commission would feel that what is done in this matter ought to be done generally throughout the United States. I think it was the judgment of the Commission that Mississippi presented a special problem, at a special time, and that it was appropriate to call the attention of the President and the Congress to that problem; to the extent that the same problem existed in any other State, the Commission would think that the same recommendations were appropriate.

Senator ERVIN. Now, I am somewhat struck by the statement with reference to housing.

Is it the attitude of the Civil Rights Commission that there is anything necessarily evil in a member of the Caucasian race preferring to live in the residential community which is inhabited by other members of his race, rather than in a mixed neighborhood?

Mr. GRISWOLD. It is the position of the Commission that that desire of the individual cannot be supported by legislation of the State consistently with the Constitution of the United States.

Senator ERVIN. But I don't believe that is an answer to my question, Dean.

I am assuming that there is no State legislation, and would like to know if the Commission is of the opinion that any American of any race, entertains an evil notion when he has a preference for residing in a residential community which is inhabited by members of his race rather than a mixed neighborhood.

Mr. GRISWOLD. Senator, I believe he may entertain that preference without violating any law; if he seeks to effectuate that by using pub-

lic authority it is, in the judgment of the Commission, contrary to the 14th amendment.

Senator ERVIN. Well, I will ask the dean if the recommendations of your Commission with respect to the District of Columbia, do not indicate that you think he ought to be deprived of that right?

Mr. GRISWOLD. We are getting quite a little bit remote from Mississippi, Senator, but I am glad to respond. We recommended that insofar as there was activity through brokers, and insofar as there was renting of units of anything more than single-family dwellings, that discrimination should be made invalid. Insofar as the private owner of a single family residence, acting on his own is concerned, we did not recommend that any action be taken to restrict his right to sell as he sees fit.

Senator ERVIN. Did you not recommend action be taken to restrict the right of a realtor to sell on his behalf?

Mr. GRISWOLD. Yes, we did.

Senator ERVIN. And you recommend, do you not, that any realtor who, attempting to obey the directions of his employer, undertakes to make a sale, shall be forbidden to carry out the preference that the sale be made to members of the Caucasian race?

Mr. GRISWOLD. I believe that is correct, Senator. Yes.

Senator ERVIN. I am glad that you interpret it the same way that I do.

Now, isn't that evidence that the Commission believes, irrespective of the legal technicalities, that Americans should no longer be allowed to select associates for themselves and their children of immature age, from members of their own race?

Mr. GRISWOLD. I thought that was decided by the 14th amendment, sir.

Senator ERVIN. Do you mean, you think that the 14th amendment is designed to deny a member of any race the privilege of selecting associates for himself and his immature children, from among his own race?

Mr. GRISWOLD. I think the 14th amendment was designed to effectuate the ideals of this country which are that this is a country of nondiscrimination, in which all people have equal status.

Senator ERVIN. In other words, you think that under the 14th amendment, a member of a race no longer has a right to undertake to select his own associates and those of his immature children?

Mr. GRISWOLD. No, Senator. He can get a house any place he wants to get a house, but he cannot keep other people from getting a house in the same area.

Senator ERVIN. And he cannot sell his own property, can he?

Mr. GRISWOLD. He can sell, under the recommendation of the Commission, he can sell his own property in as discriminatory a manner and he wants to, but he cannot do it through a broker.

Senator ERVIN. But the truth of it is, Dean, that these laws your Commission recommends for the District would require any person who wanted to stay on the wind side of the law, if he were going to sell his property through a broker or if it is more than a one-family residence, through his own efforts and if he has an opportunity to sell that property to a member of the Caucasian race or to a member of the Negro race, he would sell to the Negro if he were a wise man.

Mr. GRISWOLD. Well, I don't think it is quite as clear as that.

I think all he would have to do would be to show that he was not acting in a discriminatory manner. May I say, Senator, that there was nothing novel in this recommendation of the Commission. Such laws are in force in a considerable number of States in the country today and with respect to the District of Columbia, Congress acts as a State legislature, and through the District Commissioners, has such powers, and we were simply recommending that the District of Columbia be brought in line with a considerable number of other States in the country.

Senator ERVIN. Well, you also recommend that the right to sell property to whomsoever one pleases should be limited and restricted.

Mr. GRISWOLD. Not if they sell them on their own and it is a single family residence. We do not so recommend.

Senator ERVIN. But all other property, not single family residences—

Mr. GRISWOLD. That is correct.

Senator ERVIN. And with respect to sale of single-family residences sold through a realtor and with respect to all other property, you would limit the common law right of every property owner in the District to sell his property to whomsoever he pleased, would you not?

Mr. GRISWOLD. Senator, there are many limitations on the so-called common law rights of the property owner.

You cannot build a building more than so high; you cannot build it closer to the street than this; and you must comply with the zoning ordinances; and you cannot put a factory in a residential area; and this would simply be in accord with the well-established power of the community to regulate the owning and dealing in real estate.

Senator ERVIN. Well, you agree then to the implications of my question, as to the restriction that your Commission would put on the freedom of traffic and property?

Mr. GRISWOLD. I agree, Senator, that it would be a restriction, that is right. We believe it is a restriction which is well warranted by the 14th amendment or with respect to the District, by the 5th amendment.

Senator ERVIN. Now, you spoke in connection with Mississippi's desegregated schools, and I notice that there is a recommendation of the Commission that all the school districts be required forthwith to desegregate.

Can you cite me any decision that says that the Constitution requires desegregation of all schools?

Mr. GRISWOLD. Yes. The *Brown* case, decided by the Supreme Court in 1954.

Senator ERVIN. I hate to disagree with the Dean of the law school that I attended, but the *Brown* case does nothing except prevent discrimination which consists of the exclusion of a child from any school on account of race. That is all it does.

Mr. GRISWOLD. I understood that was the question you asked. That is the question I was attempting to answer.

Senator ERVIN. No. I asked you if you could cite me any decision that says the 14th amendment requires desegregation of all schools.

Mr. BERNHARD. Mr. Chairman, I hesitate to get into this, having gone to Yale, but it is my understanding that when the second opinion came down in the *Brown* case, the school boards were given directives to formulate school plans looking toward compliance with the first

order, to overcome separate but equal facilities in all their school system.

Senator ERVIN. As a Harvard graduate, I would suggest to the Yale graduate, that he reads the second *Brown* case again, he will find that schools are directed to admit only those who are found qualified, and that they not be excluded from the schools on account of race. As a matter of fact, the *Brown* decision itself, sets out numerous grounds for exclusion, other than race.

Mr. BERNHARD. With great respect, Mr. Chairman, I think it went a little beyond that. It put a duty on the school board to formulate its own plans, looking toward compliance with the concept that no racial criteria be used in the public school system, and desegregate those schools that were totally segregated.

Senator, you use that well-known phrase, with all deliberate speed, which obviously, was not directed simply to the individual parties then before the court, but related to the school systems themselves, generally.

Senator ERVIN. I don't want to detain you unduly, but I think, on that point, I might refer to the words of the man that knows the most about this because he wrote the original decision in the case.

First, however, I am directing that the case of *Gong Lum v. Rice*, 275 U.S. 78, be printed in the appendix of the record so that the Commission may see what the Constitution meant prior to the 17th of May 1954.

The opinion in the case of *Briggs et al, v. Elliott et al*, which appears 98 Federal Supplement, page 529 was written by a man who, in my judgment, is the greatest lawyer of our generation, John J. Parker. In that case he said that there was not a single decision that had been cited or called to his attention or which he could find which held that the 14th amendment required desegregation of schools. That opinion will appear in the appendix of the record.

Mr. GRISWOLD. One thing we can agree on, Senator, is our admiration for Judge Parker, one of my great heroes.

Senator ERVIN. Yes, sir. I think that one of the greatest tragedies of the human race was the fact that he was rejected for membership to the Supreme Court of the United States.

Mr. GRISWOLD. I agree with you entirely. He was a great gentleman about that and everything else in his life.

Senator ERVIN. I also think it might be interesting if not illuminating for the *Brown* case to appear in the appendix.

Concerning the *Brown* case, it might be interesting to promote here the comment of the editor of the Richmond News Leader, James Jackson Kilpatrick, in which he makes an observation about the school matter:

Prior to high noon on May 17, 1954, 17 American States, pursuant to provisions of their State Constitutions, and their long-accepted State laws, maintained racial segregation lawfully in their public schools. But that which had been lawful at noon became unlawful by 1 o'clock; the Constitution of the United States that had meant one thing at sunup meant quite another at sundown, and in my part of the country, public officials who had sworn to uphold the Constitution gazed in dismay upon the drastically different Constitution they were now sworn to uphold.

Mr. GRISWOLD. Senator, it seems to me that the significant phrase in that statement is "became unlawful at 1 o'clock."

Senator ERVIN. Yes, sir.

Mr. GRISWOLD. And has been since.

Senator ERVIN. He doesn't say, "has been since," does he?

Mr. GRISWOLD. I added, "and has been since."

Senator ERVIN. You added that.

Dean, I would like to ask you if, in the year 1849 the Supreme Judicial Court of the State of Massachusetts did not originate what we call the separate but equal doctrine?

Mr. GRISWOLD. Yes, to my regret. The legislature of Massachusetts changed it 5 years later.

Senator ERVIN. Yes, and then that was followed by the Supreme Court of the United States. I would like to ask you if there are not at least 70 judicial decisions from all areas of the country, North, South, East, and West, and from the Supreme Court of the United States, handed down, between that date and the 17th day of May 1954, holding that the 14th amendment permitted segregation of children on the basis of race in public schools.

Mr. GRISWOLD. I would like to point out first, Senator, that in 1849 there was no 14th amendment. So that the case about the city of Boston has nothing to do with the situation which exists since the 14th amendment. I don't know the number of cases that there were after the 14th amendment. Whatever number there were, they were not the first cases that have been overruled.

Senator ERVIN. But Dean, the State of Massachusetts in 1849 did have a provision in the State constitution, which was comparable to the equal protection of the law clause.

Mr. GRISWOLD. Not quite comparable, Senator.

Senator ERVIN. All right.

Mr. GRISWOLD. It is similar, I agree, but not quite the same.

Senator ERVIN. Well, Dean, don't you agree with me that that clause in the State constitution guaranteed equality of rights to all people in Massachusetts?

Mr. GRISWOLD. Not quite, Senator. I have forgotten—

Senator ERVIN. It is quite close to that, isn't it?

Mr. GRISWOLD. I don't remember its exact wording. It was written by John Adams. He was very good in writing about Government. He and Jefferson worked very closely together on constitutional matters.

Senator ERVIN. Well, it is about as close to the equal protection of the laws clause, as human language can be, without using identical language, is it not?

Mr. GRISWOLD. I cannot answer the question, Senator, when I don't recall the language of it.

Senator ERVIN. Well, sir, if you reread it, you will find I am right in that position. We won't call for you to reread it at this time.

Of course, the Supreme Court of the United States has no power to amend the Constitution, does it?

Mr. GRISWOLD. It has the power to interpret the Constitution. It not only has the power, but it has the duty to interpret the Constitution.

Senator ERVIN. Yes, it has an obligation to interpret the Constitution and to ascertain the meaning of the Constitution, but not to change its meaning.

Mr. GRISWOLD. Under its decisions, it also has power to overrule its prior interpretation of the Constitution. The decision of the Supreme

Court in the *Brown* case in 1954 was no surprise to anyone who was following the *Plessy* decisions of the Court. The basis of *Plessy v. Ferguson*, which you have not cited, but which is one of the cases in this group, had been completely undermined by a whole series of cases.

The *Brown* case was not merely argued; it was reargued, and the decision, I am sure, was not a surprise to you, Senator, nor to very many other people who were informed in this area.

Senator ERVIN. With all due respect I am not surprised any more by anything the Supreme Court does.

Mr. GRISWOLD. Then my statement is correct, I take it?

Senator ERVIN. The other day it handed down a decision in a case, fortunately not from the South, but from the State of New York, in which it was held that a man convicted of murder 20 years ago who did not at the time of the trial appeal his conviction because, in the event of a new trial, he might be sentenced to death instead of life imprisonment, could wait 20 years, and then reopen the question. To my mind this means that the Supreme Court held that no State can adopt any rule or procedure that is binding.

Mr. GRISWOLD. We are getting pretty far afield, Senator, but in that case, the man had been trying for all of those 20 years to get his question heard in the courts, and it still seems to me that in these great United States, we ought not to be convicting people of murder on confessions which are extracted by force. What is shocking about a decision which supports that rule?

Senator ERVIN. It is shocking to me that a State does not have the capacity to end a trial after a man has had his day in court and a full opportunity, not only to present his case, but to have it reviewed.

Mr. GRISWOLD. If a man can prove at any time that a confession was beaten out of him, it seems to me that he ought to be able to have that heard in court.

Senator ERVIN. Can we agree that from 1868, when the 14th amendment was ratified, until May 17, 1954, a period of, I believe, 86 years, the 14th amendment was construed directly opposite to its construction in the *Brown* case?

Mr. GRISWOLD. Not quite that long. I don't think the construction on which you are relying came about until 1898, in *Plessy v. Ferguson*. But for a long time it had been construed, to the great pain and chagrin of many citizens of this country, to be that a State could lawfully segregate in its school system.

Senator ERVIN. Had not Congress placed an identical interpretation on it by providing for segregated schools in the District of Columbia?

Mr. GRISWOLD. Yes.

Senator ERVIN. And frankly, had not that interpretation been placed on that provision by all who had the occasion and the legal authority and duty to construe it?

Mr. GRISWOLD. No, I don't think so.

Senator ERVIN. Well, I would like to see opinions to the contrary, but I will not delay on this point: it seems to me that since it took the Supreme Court of the United States 86 years, to even discover the fact that the 14th amendment prohibited exclusion from the schools on the basis of race, that the Civil Rights Commission might have patience with people in other areas, who think that that decision was tantamount to an amendment of the Constitution.

Mr. GRISWOLD. Senator, it is nearly 100 years since Appomattox. To talk of patience, seems to me hardly helpful in this situation.

Senator ERVIN. Well, Dean, while Appomattox is over, and so is the Civil War, unfortunately reconstruction is not.

Now, to go to some of these others—Judge Parker.

Mr. GRISWOLD. We agreed on him, Senator.

Senator ERVIN. When the *Brown* case was remanded, Judge Parker, who told me he wrote the opinion himself, stated in *Briggs v. Elliott*, 132 F. Supp. 776:

Our decision has been reversed by the Supreme Court, *Brown v. Board of Education, Topeka*, 349 U.S. 204, which has remanded the case to us with directions "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases."

And Judge Parker says this:

Whatever may have been the views of this court as to the law when the case was originally before us, it is our duty now to accept the law as declared by the Supreme Court.

Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the Federal courts are to take over or regulate the public schools of the States. It has not decided that the States must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a State may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the State may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved, even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The 14th amendment is a limitation upon the exercise of power by the State or State agencies, not a limitation upon the freedom of individuals.

Senator ERVIN. Now, I challenge anybody to bring me any decision which shows that that is not a correct interpretation of the *Brown* decision. I have not found any.

Mr. BERNHARD. Mr. Chairman, without intending to prolong this—

Senator ERVIN. I think that the Commission's recommendations go far beyond the decision; and certainly any suggestion that all schools be immediately desegregated goes far beyond the decision of the *Brown* case.

Mr. BERNHARD. Mr. Chairman, the fact of the matter is that the Court did decide in that case that any State action which would enforce a system of racial segregation, where race was a factor in determining where a person would go to school, was unconstitutional. And in the State of Mississippi and Alabama and in South Carolina, not a single Negro child is able to go to a school, even though it may be closer to his home, because of his race, which is not a Negro school.

Senator ERVIN. That is not what the recommendation of the Commission says.

Mr. BERNHARD. The recommendation merely said that the Congress consider—

Senator ERVIN. I am talking about the recommendation about education.

Mr. BERNHARD. I understand that. All the Commission said there was that Congress consider legislation which would require first-step compliance with the decision of the Supreme Court.

Senator ERVIN. In the next 6 months.

Mr. BERNHARD. The idea would be that this would place a responsibility on the school board to initiate plans looking toward compliance with the Supreme Court decision.

Senator ERVIN. You are talking about the statement on page 181, of the 1961 law report, that Congress enact legislation to compel complete desegregation as soon as possible. Don't you agree that this is a correct interpretation of the recommendation?

Mr. BERNHARD. Accurate.

Senator ERVIN. In other words, although as Judge Parker says in *Briggs v. Elliott* the Constitution does not require integration; the Commission recommends that the Congress, within a 6-month period, require complete desegregation.

Mr. BERNHARD. There is no inconsistency that I can see, between the position of the Commission and the quotation that you read.

Senator ERVIN. Well, to me, I must say, the distinction is crystal clear. The Commission requires complete integration while Judge Parker says that the Court did not require it. It merely required the State refrain from discrimination.

Dean, where is your luncheon engagement?

Mr. GRISWOLD. Across the Mall, at the Supreme Court.

Senator ERVIN. Since it is about a quarter to 1—

Mr. GRISWOLD. No, no; I am at your service.

Senator ERVIN. I can ask my questions of Mr. Bernhard because he is the one that made the statement on the general theme.

Mr. GRISWOLD. I can stay until 1 o'clock, Senator, with no inconvenience, and will stay longer if I am helpful to you.

Senator ERVIN. Dean, I noticed one of the recommendations of the Commission is that Congress pass a law to give the Attorney General the power to bring suits to prevent the exclusion of any qualified person from jury duty on account of race.

Why do you think that is necessary, in view of the other Federal statutes?

Mr. GRISWOLD. Well, this I take it, is recommendation No. 4, made in the Commission's rather comprehensive report—the 1961 report—which was that the Congress consider the advisability of empowering the Attorney General to bring civil proceedings to prevent the exclusion of persons from jury service on account of race, color, or national origin.

I find it difficult to see, Senator, how there could be any conceivable objection to that recommendation. After all, it is simply that Congress should consider it, and if at a hearing held in connection with consideration of such legislation, it could be shown that in various counties in the country, there is systematic exclusion of Negroes from jury service, I would hope that Congress would then act appropriately on that showing.

Senator ERVIN. In view of the other statutes on the subject, why is it necessary?

Mr. GRISWOLD. As far as I know, there are not now adequate statutes on the subject, and in particular, there is no statute authorizing the Attorney General to proceed in a comprehensive way, to eliminate discrimination in jury service.

Senator ERVIN. Well, there is a statute that has been on the books a long time—U.S. Code, title 18, section 243—providing that—

No citizen possessing all other qualifications which are or may be prescribed by law, shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than \$5,000.

Mr. GRISWOLD. That statute provides only for a criminal prosecution.

It is the difference between a civil remedy and a criminal remedy, just as there is under the antitrust law, Senator.

Anybody who violates the antitrust laws can be prosecuted, but the Attorney General is authorized to start a civil suit, to enjoin violation of antitrust laws.

Senator ERVIN. In other words, you would not be satisfied with criminal punishment for a man who did a forbidden act; you think the Attorney General ought to be empowered to bring suits which in effect, would undertake to direct the action of jury commissioners, in the performance of what are essentially local duties.

Mr. GRISWOLD. Yes, Senator. I don't see how there can be conceivably any objection to such a statute. After all, it is simply carrying out the clear provision of the Constitution of the United States, and the duty of Congress to enforce that provision.

Senator ERVIN. Well, of course, I object to these statutes because while I think guilty parties ought to be punished, I also think the Federal Government ought to refrain from interjecting itself in directing local officials on how they shall specifically perform their duties.

Mr. GRISWOLD. Senator, I believe deeply that local officials should enforce the law, including all the law, including the Constitution of the United States; but when local officials do not enforce the Constitution of the United States, then I think that there ought to be a Federal remedy to see that that is complied with. All of these problems would be resolved, Senator, if local officials would enforce all of the law, including the Constitution of the United States.

Senator ERVIN. Well, of course, Dean, all problems would be solved to the satisfaction of some people if the Federal Government took charge of everything.

Mr. GRISWOLD. No, I did not suggest that at all.

I am a great believer in local government. I am a town meeting member in the town of Belmont, Mass.—you probably never heard of such an office.

Senator ERVIN. Yes, I have.

Mr. GRISWOLD. We have town meetings in Massachusetts and I participate regularly in the government including the imposing of the taxes in my town, and I would greatly resist any effort by the United States to interfere with the town government, with the town of Belmont in Massachusetts.

We seek to comply with the Constitution of the United States, as well as the constitution of Massachusetts.

Senator ERVIN. I am very well acquainted with the town system in Massachusetts. It is one of the glorious contributions which Massachusetts made to American Government, and that is one reason I fight these recommendations, which are efforts to rob the people of their right of self-government.

Mr. GRISWOLD. No, Senator. I am a great believer in State and local government, with the obligation of the officials of the State and local government to comply with the Constitution of the United States, which should not be overlooked.

Senator ERVIN. I agree; but I think the people who don't comply with it should be punished, instead of enacting laws which in effect are designed to allow the Department of Justice to take control of the local governments in the United States.

The Commission's recommendation would duplicate existing law. Maybe the Commission was following the example of an old rough company commander, who was required to read articles of war to his company every month, under the regulations. And the most serious article of war said that a man—so-and-so should be punished by death, or such other and further punishment as the court-martial may prescribe. He always read it like this: "Whoever violates this article of war shall be punished by death, and such other and further punishment as the court-martial shall prescribe."

Mr. GRISWOLD. Senator, I am opposed to duplication in Government. I think State and local officials should comply with their duties, and if they would, many of these problems would be resolved.

Senator ERVIN. Well, I am glad to know you still believe in the town meeting, because it worries me that here in Washington apparently most other people, except you and myself, think that the Federal Government ought to take charge of everything.

Mr. GRISWOLD. Now we have two things we agree on, Senator.

Senator ERVIN. You know, one of the strange things is, it seems to me, that as soon as a man gets elected to the Senate or the House, he contracts the Potomac fever disease and suffers under the mental delusion, that those who elected him have not got sense enough to manage their own affairs; they want the National Government to take charge of them.

Mr. GRISWOLD. Senator, if people don't want the National Government to take charge of their affairs, in their States, your best way to keep the National Government out is to have the State and local officials comply with the law in all respects, because in any case where the State and local officials are really seeking to enforce the laws, including the Constitution of the United States, there is no need for Federal participation. That is evidenced in Mississippi; it is evidenced in Alabama; it has been evidenced in Arkansas. If only State and local officials will comply with their responsibilities, there will be no need for Federal intervention.

Senator ERVIN. You might state that in another way:

As long as local people conform their notions to those of the people in power in the centralized government.

Mr. GRISWOLD. No, sir. As long as they conform their notions to the 14th amendment, of the Constitution, there will be no need to invoke the Federal Government.

Senator ERVIN. But in view of the fact that the 14th amendment changes meaning so frequently, I don't know how the folks can be expected to stay up to date with it.

Mr. GRISWOLD. I think they can understand quite clearly; indeed, Senator, I think they do understand quite clearly.

Senator ERVIN. I notice recommendation No. 2 on pages 150 and 151, and recommendation No. 3 on page 151, which I understand to ask that the President, by Executive order, or the Congress, by legislative enactment, prohibit any lending institution, supervised in any manner by any Federal agency, from practicing what the Commission calls discrimination, in any mortgage loan to any individual, that is, practice racial discrimination.

Now, if that recommendation is implemented in either of those manners, would it not undertake to let a Federal agency supervise the action of every National bank, every State bank, every Federal savings and loan association, every building and loan association, and every other lending institution which has the benefit of Federal insurance?

Mr. GRISWOLD. Senator, as I understand that recommendation, it signifies to me that if an agency chooses to take the benefits of Federal regulation or Federal insurance, it should comply with the Constitution of the United States.

Senator ERVIN. Well, is there anything in the Constitution of the United States which prohibits an individual from discriminating?

Mr. GRISWOLD. There is something in the Constitution which prohibits the Federal Government from aiding in discrimination; yes, sir.

Senator ERVIN. What provision?

Mr. GRISWOLD. The fifth amendment.

Senator ERVIN. So a bank is also covered by due process?

Mr. GRISWOLD. A bank what—

Senator ERVIN. A bank is covered by due process?

Mr. GRISWOLD. Yes. Not banking—but Federal participation in banking is governed by the fifth amendment.

Senator ERVIN. Don't you think that would be an extension of the power of the Federal Government?

Mr. GRISWOLD. No, sir. It would be some extension, but the President has gone nearly that far. He did not take that recommendation but I hope that in the course of time, he will.

Senator ERVIN. Now, doesn't this recommendation necessarily imply that if it is implemented, a Federal agency will have authority to reverse the actions of a lending institution or compel it to make a loan of its own funds?

Mr. GRISWOLD. Or conceivably, withdrawn the insurance or other benefit which the agency gets from the Federal Government. Various sanctions might be applied.

Senator ERVIN. What kind of a provision would you make in implementing that, to determine whether the lending institution was acting on sound banking principles, or was actuated by discrimination?

Mr. GRISWOLD. That would be a question of fact that would have to be determined by some appropriate agency.

Senator ERVIN. By whom?

Mr. GRISWOLD. It might be determined by the Comptroller of the Currency or by the Housing and Home Finance Agency.

Senator ERVIN. Would you allow any review of that decision to the courts?

Mr. GRISWOLD. Yes. I would have no objection to that.

Senator ERVIN. But in the first instance——

Mr. GRISWOLD. You might even assign that responsibility to the Civil Rights Commission, Senator. That it seems to me would be appropriate. It does not have the responsibility now but it might be given it.

Senator ERVIN. I would rather have it granted to the courts than to the Civil Rights Commission, if it is going to be granted at all.

Mr. GRISWOLD. I assume that any action by the Civil Rights Commission, if given responsibility, would be subject to review by the courts. I am a great believer in the courts, Senator. I am a believer in complying with the court's decision.

Senator ERVIN. I am a great believer in the courts instead of all these other regulatory bodies. At least, you are heard. You may have your throat cut after you are heard, but you can get your day in court.

Well, you see absolutely no objection to the Federal Government's assuming authority to tell a lending institution to whom it can make loans of its money?

Mr. GRISWOLD. If the Federal Government is providing benefits to those lending institutions. If a banker wants to operate as a State bank, and not be a party of the Federal Deposit Insurance System, and he is free to do so if he wishes to; then none of this would apply to him.

Senator ERVIN. Yes, but he pays his own money for this insurance protection.

Mr. GRISWOLD. Yes. He gets a great benefit from the Federal Government.

Senator ERVIN. And the money that he has on deposit belongs to depositors. So you think that it is perfectly all right for the Federal Government to assume the responsibility of directing people how they shall loan their own money, even though the decision, necessarily, is going to turn on the intent of the mind, rather than the external conduct.

Mr. GRISWOLD. Oh, it may not. It may be perfectly clear in the external conduct. There may be an internal memorandum which is shown in evidence by which the board of directors directs the lending officer never to loan a Negro money for a house. If that could be shown in evidence, the proof of discrimination would be quite clear.

Senator ERVIN. Yes, but it is not likely that it would be that clear.

Mr. GRISWOLD. There may be other evidence. I cannot foresee the cases any more than I can foresee the reaction to this report we were talking about a while ago.

I quite agree, if the evidence is doubtful, if it is solely a matter of inference as to intent. On the other hand, upon a showing of a pattern that in a dozen, 15, 20 cases, they refused to make loans to Negroes, you may find that the state of mind becomes very clear.

Senator ERVIN. Well, if the recommendation of your Commission in this respect is implemented, and the Federal Government undertakes to assume the responsibility to control banks and lending institutions in the loaning of their own money, then who would determine how long the loan was to be made, what rate of interest was to

be charged, who would be the trustee, and what the conditions of foreclosure would be?

Mr. GRISWOLD. Of course the bank would, Senator—there is no question about that—I would assume the sanction for violation of this would be simply withdrawal of Federal funds.

Senator ERVIN. Well, if the bank were left to do it, would not the fact they loaned money on a mortgage to a member of the Caucasian race for a period of time, then loaned it for a shorter period of time to members of a minority race, be evidence that they were discriminating against the minority race?

Mr. GRISWOLD. Not necessarily, Senator. I would have to know the other facts about the man's income; other property; the nature of the job he held; and all the factors that a banker normally takes into account in determining such matters.

Senator ERVIN. Well, the Federal agency would not only be confronted by the question of whether the loan was refused on the basis of race, but also whether the terms of different loans were different to the prejudice of a member of the minority race, would they not?

Mr. GRISWOLD. If discrimination were clearly shown then it seems to me that an appropriate sanction should be applied.

Senator ERVIN. Do you think that it is practical to enter this area?

Mr. GRISWOLD. I think it might be very effective, Senator. I think it might be very potent.

Senator ERVIN. It would certainly be potent. There is no question that it would be potent for the Federal Government to undertake to tell people engaged in operating these lending institutions, throughout the United States, to whom they should make loans, and what the terms of the loans should be.

Mr. GRISWOLD. All experience shows, Senator, that the key point in the housing problem is with the lending institutions, and the effort to get at the problem of discrimination and lending institutions is one well worthy of the careful consideration of the Congress, in my judgment.

Senator ERVIN. And, extended all over the United States, would it not, in effect, put all of them under Federal supervision, as to the racial characteristics of the people to whom they made loans, and as to every determination and condition, those loans would be subject to the scrutiny of a Federal agency?

Mr. GRISWOLD. Senator, they are now; all of them are subject to examination by examiners of the Comptroller of the Currency or of the Federal Deposit Insurance Corporation, and many banks have had sanctions applied against them because they were not acting prudently with respect to the loans they made.

Senator ERVIN. Yes, Dean—prudent. That was the only question—the economic factor; whether they were sound loans. This is quite a different field.

Mr. GRISWOLD. This is adding an additional factor in compliance with the Constitution of the United States.

Senator ERVIN. Why, Dean, it would add a great lot more. It would empower the Federal Government not only to make a determination whether a loan is prudently made, but it would allow them to pass on all the terms and conditions of all the loans and all the applications for loans.

Mr. GRISWOLD. I don't think so, Senator, but the objective, it seems to me, is clear enough.

Senator ERVIN. Would not the prohibition of discrimination apply to the term of the loan, as well as to the granting of the loan?

Mr. GRISWOLD. Yes, Senator, and if discrimination were found, a sanction would be appropriate.

Mr. BERNHARD. Senator, may I add one thing here?

The Mortgage Bankers Association of America has taken a very clear position in support of this regulation and the extension of the scope of the Executive order, to cover conventional financing.

They wrote a letter to the President, in which they said as follows:

The association has always taken the position that the success of a coercive action of this type by the Government will be in direct relationship to the breadth of its application. If all forms of mortgage lending cannot be reached, then the result will be the withdrawal from those forms that are reached. The present order cannot be considered a first step since, in this situation, the move cannot effectively be made in stages.

Consequently, in the interest of the purpose that the order is designed to serve, I urge you, without delay, to broaden the scope of the order to cover all mortgage lending by federally chartered and insured institutions or to seek other means for reaching the objective to which all Americans should be devoted.

This is the president of the Mortgage Bankers Association.

Senator ERVIN. Well, there are foolish people in all professions and occupations.

Mr. BERNHARD. I might say, that was the resolution of the entire board.

Senator ERVIN. Mr. Bernhard, I am intrigued by this. Did you draw up this paper?

Mr. BERNHARD. Which one?

Senator ERVIN. The recommendation.

Mr. BERNHARD. I participated in it. I did not draw it up.

Senator ERVIN. You have done a good deal of work on it, haven't you?

Mr. BERNHARD. I don't think any more than some of the other Commissioners did.

Senator ERVIN. Anyway, I was intrigued by one statement here.

Mr. GRISWOLD. Senator, would it be convenient if I leave?

Senator ERVIN. Yes, indeed. I am sorry it took this long.

Mr. GRISWOLD. That is quite all right. I don't want to leave if you wish me to stay.

Senator ERVIN. Well, I think I can get the answers to the rest of my questions from Mr. Bernhard.

Mr. GRISWOLD. Thank you very much, Senator.

Senator ERVIN. The committee appreciates your coming here. Good luck on all your efforts, except where your views do not coincide with my sound views. [Laughter.]

Mr. GRISWOLD. Thank you.

Senator ERVIN. Has the Civil Rights Commission ever taken any testimony concerning anything in Mississippi?

Mr. BERNHARD. Only to the extent of receiving affidavits from individuals.

Senator ERVIN. Well, has not your experience been that affidavits ordinarily are not always to be accepted at face value?

Mr. BERNHARD. I don't think they are adequate, total proof of a particular fact, no.

Senator ERVIN. Well, I have often found in my experience in the practice of law, that complaints frequently don't coincide with the facts shown in the evidence.

Mr. BERNHARD. I would go beyond complaints. There have also been affidavits in support of certain claims, which of course, subject the individual to perjury.

Senator ERVIN. In other words, all you have are ex parte affidavits.

Mr. BERNHARD. That is true.

Senator ERVIN. From the State of Mississippi.

Mr. BERNHARD. That is true. If you are talking about the total investigative responsibility the Commission has carried out in the State of Mississippi, I think it is appropriate to say that over the past year and a half, actually, since January 1 of 1962, we have had 18 lawyers from the staff in the State of Mississippi, and have put in over 265 man-days.

Senator ERVIN. But isn't it true that they have just conducted their investigation orally?

Mr. BERNHARD. They conducted them both orally, and received statements—formal statements.

They employed the usual investigative techniques of seeing those who complained and seeking to talk with those against whom complaints have been made.

Senator ERVIN. I notice this statement on page 1:

Another member of the Mississippi State Advisory Committee and his wife were jailed on trumped-up charges after their home had been defiled.

Now, what was the basis for that statement?

Mr. BERNHARD. The basis for that statement is that we investigated that very thoroughly. We talked to the prosecuting agencies in that county. There were questions raised by the prosecuting officials themselves, as to the validity of some of these charges. Ultimately, we talked to the Department of Justice about it. Finally, these charges were dismissed, with prejudice, by the prosecuting agency.

Senator ERVIN. Were you in full possession of all of the facts possessed by the prosecuting agency?

Mr. BERNHARD. I think we had not only the same facts, I think we even had more. I think we made a very broad effort to talk with all the police enforcement agencies in that community, as well as to all those reputed or alleged to have been witnesses to this incident, including those, I might say, who made the initial complaints against them.

Senator ERVIN. So you are satisfied in your own mind, that the prosecution had no competent facts that were withheld from you?

Mr. BERNHARD. I can never be satisfied on that, but I think we can rely on the record.

Senator ERVIN. I think that was a rather drastic statement that you made: "A trumped-up charge."

Mr. BERNHARD. I might say that the prosecution itself in this case indicated extremely serious doubt as to the substantial nature of the charges that were made and raised questions as to the validity of the charges, and the fact that they were all dismissed, I think, is some indication that they did not have much validity.

Senator ERVIN. Did you take a copy of this April recommendation to the President?

Mr. BERNHARD. Yes, we did.

Senator ERVIN. Did you discuss it with him?

Mr. BERNHARD. Yes.

Senator ERVIN. And you told him what you conceived it meant, did you not?

Mr. BERNHARD. Well, yes. I think we did not tell him what it meant. It was discussed.

Senator ERVIN. It was discussed. He had an opportunity to read it and also, had your own interpretation of it, did he not?

Mr. BERNHARD. Pardon me?

Senator ERVIN. He had an opportunity to read it and also hear your interpretation of it?

Mr. BERNHARD. I never discussed that particular matter here, on that final—I presume are talking about recommendation No. 3. I did not—

Senator ERVIN. I am talking about the whole paper.

Mr. BERNHARD. Are you? I think the President did know what the Commission had in mind.

I might add, Senator, the Chairman of our Commission received a letter from the President after it had been received, and, among other things, he did indicate, and I quote: "In any event, I can assure you that the proposal will be promptly and carefully reviewed within the executive branch."

Senator ERVIN. Well, I think the President understood; I think he got the same meaning as the Washington Post and the New York Times, the other press, and myself, because the Lawrence Daily Journal, Lawrence, Kans., a Republican paper, had an editorial in the April 23, issue, saying:

President Kennedy, who sometimes has seemed intensely eager to assume new powers, recently surprised some of his critics. He flatly rejected a proposal that he consider withholding Federal funds from Mississippi to force that State to protect the rights of its Negro citizens. He said:

"I don't have the power to cut off the aid in a general way as was proposed by the Civil Rights Commission and I would think it would probably be unwise to give the President of the United States that kind of power * * *."

Kennedy added that to use such power in one State might lead to using it in other States for other reasons.

Mr. BERNHARD. Mr. Chairman, I know that, I heard that interpretation. I might also say that the President said, at the press conference, and I quote, "I don't think we should extend Federal programs in a way which encourages or permits discrimination," and I think the President took the point of view and has taken the point of view, that no Federal funds should be expended if all the citizens, and all individuals, do not have equal access to those programs.

Senator ERVIN. I would like to place the editorial that appeared in the Lawrence Daily Journal, Lawrence, Kans., in the record at this point.

(The excerpt from the Lawrence Daily Journal is as follows:)

[From the Lawrence Daily Journal-World, Lawrence, Kans., Apr. 23, 1963]

IN PERSPECTIVE

President Kennedy, who sometimes has seemed intensely eager to assume new powers, recently surprised some of his critics. He flatly rejected a proposal that he consider withholding Federal funds from Mississippi to force that State to protect the rights of its Negro citizens. He said:

"I don't have the power to cut off the aid in a general way as was proposed by the Civil Rights Commission and I would think it would probably be unwise to give the President of the United States that kind of power * * *."

Kennedy added that to use such power in one State might lead to using it in other States for other reasons.

The President emphasized that he shares the Commission's "stated goal of assuring for all citizens of the United States the full enjoyment of the rights guaranteed by the Constitution." He praised the Justice Department for an "outstanding" record in prosecuting violations of Federal law and he said it will soon issue a memorandum detailing its activities in Mississippi.

But he said the Commission's fund cutoff proposal "raises difficult and far-reaching considerations" due to the limited discretion the Government has in implementing Federal programs in the States.

The President also stressed that any such withholding of Federal funds probably would "serve to further disadvantage those that I know the Commission would want to aid. For example, hundreds of thousands of Negroes in Mississippi receive social security, veterans', welfare, school lunch, and other benefits, from Federal programs."

Any elimination or cuts in such programs "obviously would fall alike on all within the State and, in some programs, perhaps even more heavily upon Negroes," he added.

In working toward its goals, an agency like the Civil Rights Commission must show a sense of responsibility as well as a grave concern for social justice. Its request about Federal funds being withheld from Mississippi showed poor forethought and considerable irresponsibility.

It is to the President's credit that he did not seize upon this suggestion as an excuse to try to extend Presidential powers, but instead put the issue in far sounder perspective.

Senator ERVIN. I should also like to have placed in the record an editorial from the Chicago Tribune, Sunday, April 21, 1963, in which it says, among other things:

President Kennedy has said quite properly that he cannot accept the unanimous suggestion of the Civil Rights Commission that he consider withholding Federal payments to the State of Mississippi.

(The excerpt from the Chicago Tribune, Apr. 21, 1963, is as follows:)

[From the Chicago Tribune, Apr. 21, 1963]

BUILT-IN CONFLICT

President Kennedy has said quite properly that he cannot accept the unanimous suggestion of his Civil Rights Commission that he consider withholding Federal payments to the State of Mississippi.

According to the Commission, the State of Mississippi has "placed itself in direct defiance of the Constitution and Federal court orders." The difficulties put in the way of Negro citizens trying to establish themselves as registered voters provided the occasion for the Commission's unprecedented action. Though there is prejudice in every State, only a few Southern States make race a basis for denying access to polling booth or public service.

Conspicuous in the background is the fact that Mississippi receives from the Federal Government more than twice the amount it pays in Federal taxes—\$650 million received in fiscal 1962, compared to \$270 million paid. As the Commission sees it, "Lawless conduct and defiance of the Constitution by certain elements in one State are being subsidized by the other States."

Mr. Kennedy recognizes in this instance that the power of the Central Government to withhold Federal money from one State or another at its own pleasure would represent a formidable threat to self-government and the constitutional sovereignty of the respective States. Yet there is little confidence in his hope that the people of Mississippi will suddenly recognize the advantages of belonging to the Federal Union and will willingly abandon the course which has been declared unconstitutional.

This conflict of values is inevitably built into "Federal aid" whatever its purpose or direction. Whether money from Washington is spent in behalf of other nations as "foreign aid," or in behalf of the States from which it came, appropriating money from the National Treasury for the support of other agencies

raises this explosive question: What happens when alder and aided disagree on fundamental political issues?

It is dubious stewardship for the Government of the United States to finance regimes in headlong conflict with the stated purposes and values of the Nation. Yet if States and cities [or nations] are financially dependent on the pleasure or displeasure of men in Washington, they are not really self-governing. Both those propositions are true.

There is one way out of the difficulty. It is for the Federal Government to limit its appropriations to such functions as it can itself administer.

If Congress should decide to act on that principle, Government spending would decline and the threat of total centralized power would recede.

But if Congress continues to increase the number of its dependents, there will be mounting discontent on the part of recipients, and taxpayers' money will support some regimes more interested in mulcting the Federal Government than in carrying out its policies. These considerations apply equally to Yugoslavia and Mississippi.

Senator ERVIN. I would also like to place an editorial from the New York Times, in the record, which says that:

The Civil Rights Commission's recommendation that President Kennedy consider withholding Federal funds from Mississippi in punishment for its mistreatment of Negroes amounts to a proposal to read that State out of the Union. We can think of no suggestion less calculated to promote civilized race relations or to cool the inflamed passions that erupted in the Civil War.

The cutting off of Federal funds as a coercive device is not only wrong in principle but it would bear most onerously on the State's poorest citizens, including the very Negroes it is designed to protect.

Even if this were not so, the use of pocketbook pressure instead of legal process, to compel Mississippi to respect the Constitution offends the concept of sound Federal-State relationships built on law.

(The excerpt from the New York Times is as follows:)

[From the New York Times, Apr. 19, 1963]

WRONG WAY TO RACE HARMONY

The Civil Rights Commission's recommendation that President Kennedy consider withholding Federal funds from Mississippi in punishment for its mistreatment of Negroes amounts to a proposal to read that State out of the Union. We can think of no suggestion less calculated to promote civilized race relations or to cool the inflamed passions that erupted in the Civil War.

We share the Commission's conviction that Mississippi officials are engaged in studied defiance of constitutional guarantees of equal rights for Negroes. We have repeatedly urged President Kennedy and the Justice Department to press with maximum vigor for the full enforcement of these rights in Mississippi and every other State. But the road to making constitutional guarantees effective lies through the courts and through civil rights legislation.

The cutting off of Federal funds, as a coercive device, is not only wrong in principle but it would bear most onerously on the State's poorest citizens, including the very Negroes it is designed to protect. Poverty, illiteracy, and lack of economic opportunity are part of the explanation for the Mississippi white citizens systematic repression of their Negro neighbors. The President would merely extend these spawning grounds of bigotry by adding to the State's fiscal problems.

Even if this were not so, the use of pocketbook pressure, instead of legal process, to compel Mississippi to respect the Constitution offends the concept of sound Federal-State relationships built on law.

Senator ERVIN. I would also like to put in the record an editorial, "Wrong Way With Mississippi," which appeared in the Los Angeles Times:

But this is not the same as inviting the President to usurp the power to distribute all appropriations voted for the States as if they were rewards for good constitutional behavior. * * *

If the President of the United States were suffered to follow the wide open way that the Civil Rights Commission shows to him, our kind of balanced constitutional government could lose its meaning. At worst, his decisions might not be based necessarily on constitutional principles; they could be based on pure, raw, political considerations.

(The excerpt from the Los Angeles Times is as follows:)

[From the Los Angeles Times, Apr. 21, 1963]

WRONG WAY WITH MISSISSIPPI

The understandable anger of the U.S. Commission on Civil Rights over racial discrimination in Mississippi has tempted it to endorse the dangerous principle that a noble end justifies whatever means may be necessary to achieve it.

In a special report, the Commission called on President Kennedy for a massive effort to force Mississippi to protect the rights of its Negro citizens. Since Mississippi has failed to comply "with the Constitution and laws of the United States," the report noted, "there is an overriding constitutional obligation to make certain that Federal funds are expended in a manner which benefits all citizens without distinction."

The report does not come right out and say it but the hint is broad: the President is advised to "explore the legal authority he possesses as Chief Executive" to punish a disobedient State by withholding from it money that has been appropriated by Congress for various aids and subsidies to all the States.

The mischief that would come if a President tried to control the flow of this money to punish a particular State, or States, is suggested by the fact that Congress in the last 3 years has rejected a number of proposals which would have subjected appropriations to such control.

On the other hand, Congress has not been blind to the possibility of discrimination. Its intent in clear cases cannot be mistaken. The laws regulating Government contracts have nondiscrimination clauses. So have the laws governing housing which is financed with Federal funds or has Federal mortgage guarantees.

It is the constitutional duty of the President to enforce such laws. But this is not the same as inviting the President to usurp the power to distribute all appropriations voted for the States as if they were rewards for good constitutional behavior.

A President trying for such power would surely come into a major collision with Congress.

If the President of the United States were suffered to follow the wide open way that the Civil Rights Commission shows to him, our kind of balanced constitutional government could lose its meaning. At worst his decisions might not be based necessarily on constitutional principles; they could be based on pure, raw, political considerations.

In the case of Mississippi, moreover, the withholding of general Federal funds would injure those whom it theoretically aimed to assist—the underprivileged Negroes themselves.

The mighty Federal Government has constitutional and statutory means of dealing with recalcitrant Mississippi, as it demonstrated in the Meredith case, which was settled with general approval. Vigorous enforcement is possible and Congress can pass additional statutes when they prove necessary.

The power of the President of the United States is already awesome, almost omnipresent. The assortment of pressures he can bring to bear on a dissenter from his will or policy was demonstrated last year in the steel crisis. This power ought not to be unlimited. Yet the Civil Rights Commission would have him push the limits out further than they have ever been in peacetime. A constitutional wrong is not corrected with another.

Senator ERVIN. I would also like to put in the record on this question of interpretation, an editorial from the Richmond News-Leader dated April 19, 1963.

(The excerpt from the Richmond News-Leader is as follows:)

[From the Richmond News-Leader, Apr. 19, 1963].

THE EXTORTIONERS

The U.S. Civil Rights Commission finally performed a genuinely useful service on Wednesday: It provided the most brilliantly revealing insight we yet have seen into the murky depths of the ultraliberal mind at work.

The Commission recommended, in effect, that the President of the United States, by his own decree, withhold Federal contracts and grants-in-aid from the State of Mississippi until the State ends what the Commission regards as "subversion of the Constitution." We say the Commission "in effect" made this arrogant recommendation, because the Commission lacked even the courage of its contemptible convictions. In mealy-mouthed sentences, the Commission urged Mr. Kennedy to "explore his legal authority" for such decrees, and asked Congress to "consider seriously" the idea of appropriate legislation.

In the eyes of the Civil Rights Commission, the question is whether "Federal funds contributed by citizens of all States" should be made available "to any State which continues to refuse to abide by the Constitution and laws of the United States." That two such respected law deans as Robert G. Storey of Southern Methodist and Spottswood W. Robinson 3d, of Howard, could have signed such a recommendation only makes the proposal all the more incredible.

Who is to judge, pray, when an entire State is "subverting" the Constitution or "refusing to abide by the laws of the United States"? Does the Commission on Civil Rights propose to serve as prosecutor, judge, and jury, and convict an entire State on its own naked say-so? The proposal draws applause from those liberals, mind you, who profess to support due process of law. What due process of law would they accord Mississippi?

Talk of subverting the Constitution. The Commission's proposal would not merely subvert the Constitution, but obliterate it altogether. The Commission is inviting the President to usurp powers nowhere granted him by law; the Commission would simply repeal the section of the Constitution which says that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. Does the Constitution say that no bill of attainder shall be passed? The Commission would have Mr. Kennedy simply proclaim a bill of attainder against the whole State of Mississippi.

Our dictionary defines "extortion" as the act of obtaining a desired end "by force or undue or illegal power or ingenuity." That is precisely what the Civil Rights Commission has in mind here. It would obtain voting rights for certain Negroes in certain counties by force, undue or illegal power, and ingenuity. Especially ingenuity. The Commission points out in its report to the President that \$650 million in grants-in-aid and prime contracts are marked for Mississippi next year. The sum includes Federal grants for aid to the blind, aid to dependent children, aid to veterans, highway construction, vocational education, small business loans, river and harbor improvement, and the like. "The Commission does not want the people of Mississippi, either Negro or white, to lose benefits available to citizens of other States," says the Commission, and it rolls its eyes to heaven; the sanctimonious statement follows that the Commission has concluded that only by threatening such a withholding can Mississippi be persuaded to mend her ways.

Now, this newspaper repeatedly has condemned the indefensible shenanigans by which officials of a few Deep South counties have denied voting rights to qualified Negroes. We have said, time after time, that if the South is to stand on the Constitution, it must stand on the whole of the Constitution. If we expect others to respect the 10th amendment, we of the South cannot trifle with the 15th amendment. This defines the "right to vote" as just that: a matter of right. The right must be upheld.

But this is a far cry from saying that every Negro who presents himself at a registrar's office is, by reason of his race, specially qualified to register and vote. In one great test case of this alleged "subversion," the Fifth U.S. Circuit Court of Appeals summarily threw out of court a case in which a Negro contended his right to vote had been arbitrarily denied him. The Negro was wholly illiterate, as the evidence plainly proved.

Plenty of law is on the books now, by which these intransigent local officials may be punished for their chicanery. The idea of denying all the people of Mississippi, white and Negro alike, their fair and rightful share of Federal

appropriations for which they have been equally taxed is a monstrous perversion of both law and equity.

The Civil Rights Commission has had little enough reason for existence. This outrageous recommendation provides abundant reason for wiping it out completely.

Senator ERVIN. I would like to put in the record a copy of James Reston's column in the Atlanta Constitution on Saturday, April 20, 1963.

(The excerpt from the Atlanta Constitution is as follows:)

[From the Atlanta Constitution, Apr. 20, 1963]

When the U.S. Commission on Civil Rights proposes that Mississippi be treated like a foreign power, it is fairly obvious that something is seriously wrong. The Commission suggests that the President should do everything in his power "to withhold Federal funds * * * until Mississippi demonstrates its compliance with the Constitution and laws of the United States."

This is a popular procedure in handling uncooperative foreign nations under the Foreign Aid Act. If they refuse to do what Washington wants, there is always a cry here to cut or eliminate their funds, but until now there has been little support for treating States of the Union like rebellious children.

There are at least two reasons for taking a skeptical view of this proposal: first, that it is wrong in principle, and second, that it wouldn't work.

Mississippi is in trouble today partly because it is so isolated in mind and spirit from the rest of the Nation, and partly because it is so poor. The effect of the Commission's proposals, if accepted by Congress, would probably not be to bring the State to heel, but merely to increase both its poverty and its solution.

Mississippi's annual per capita income in 1961 was \$1,233—lowest in the Nation.

It is divided between white and black, between the dry and radical hills and the wet and conservative delta. In 1960, the State had 915,700 Negroes, 43 percent of its population. This is the highest percentage of Negroes of any State in the Union.

Half of the population over 25 have had fewer than 9 years in school, and in 1956, Mississippi abolished its 138-year-old compulsory education law as a device to avoid racial integration.

The average annual salary for full-time faculty professors at the University of Mississippi is \$6,683. At the University of Alabama it is \$7,934 and at the University of California, it is \$11,180.

It is true, as the Commission says, that Mississippi gets more from the Federal Government than it pays in taxes. Per capita income tax collections in 1960, for example, was only \$129.95 in Mississippi. The latest figures for fiscal year 1962 indicate that the Federal Government received from all sources in Mississippi only \$270 million, while the payments of the Federal Government to Mississippians, as calculated by the Commission, exceeded \$650 million.

Ironically, Washington has a policy for most of the underdeveloped areas of the world except her own. The way to bring along the "underdeveloped nations," this Government believes, is to provide them with "development grants" and "technical assistance," and "investment guarantees," and a cataract of teachers, technicians, and industrialists.

It could be in the end that we need an "Alliance for Progress" in Mississippi, a people-to-people program, more student exchanges, more technicians bringing the new scientific revolution to the State, more interdependence, more "partnership," and more "technical assistance."

Senator ERVIN. Did you read the article, "Cruel and Unusual Punishments," by David Lawrence in the U.S. News & World Report of April 29, 1963?

Mr. BERNHARD. Yes, I did, sir.

Senator ERVIN. He places substantially the same construction on this as these others, and he also adds this comment, which I think is worthy of consideration:

"Maybe it is time for the members of the Civil Rights Commission to reread the Constitution."

The editorial will appear at this point in the record.

(The editorial from the U.S. News & World Report is as follows:)

[From the U.S. News & World Report, Apr. 29, 1963]

CRUEL AND UNUSUAL PUNISHMENTS

(By David Lawrence)

The Constitution of the United States says that no "cruel and unusual punishments" shall be inflicted by law upon the citizens of our country.

The Constitution also says that no person shall "be deprived of life, liberty, or property, without due process of law."

Yet in the past few days a Federal agency, the U.S. Commission on Civil Rights, has issued a report recommending that the citizens of a sovereign State be punished en masse by the Federal Government.

The Commission sets itself up as a judge of the standards of efficiency of a State government and demands that all the people of a State be punished as a means of securing obedience to "civil rights" decrees.

The Commission makes the formal request that:

"The Congress and the President consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State which continues to refuse to abide by the Constitution and laws of the United States; and, further, that the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi, until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States."

Are we really being told that court decrees are not sufficient or require too much time, and that the Federal Government must, therefore, impose "cruel and unusual punishments" on all the people of a State?

Impatience is understandable. Even the mobs that in the past lynched Negroes in the South or horse thieves in the West made the same argument—that the legal process was subject to delays and, since the prisoner was guilty anyhow, he should be immediately strung up.

Why, however, is this new species of "lynch law" recommended as applicable to the people of a State—innocent and guilty alike? Where in the Constitution is there the slightest basis for assuming that the citizens of one State—whose State government happens to be recalcitrant, though legally elected—must be deprived of the benefits to which citizens of all States are normally entitled? What becomes of the constitutional provision which says that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"?

The Civil Rights Commission declares that during fiscal year 1962 the payments of the Federal Government to the State of Mississippi, its counties, municipalities and individuals exceeded \$650 million. This includes military prime contracts, direct civilian and military payrolls, as well as small business loans, public works projects and Federal Aviation Agency grants.

The Commission's report parallels the following comment made by Attorney General Robert Kennedy in an interview in the London Sunday Times on October 22, 1962:

"The Federal Government is spending about \$650 million in Mississippi, even though the State pays only \$350 million in Federal taxes. There are possibilities of withholding some Federal money from Mississippi, but it's a lever that must be handled with great delicacy."

Are the innocent people in Mississippi who have no part whatsoever in the enforcement of law to be deprived of Federal benefits until they vote out of office persons elected to the State government who have aroused the opposition of the members of a Federal agency? This is a form of official blackmail and coercion.

Are we to return to the dark days of 1860 when a majority in Congress denied seats to Senators and Representatives from various States and imposed military rule to compel the adoption of the 14th amendment?

The Civil Rights Commission brazenly charges that in Mississippi "the lawless conduct and defiance of the Constitution by certain elements in one State are being subsidized by the other States."

What an emotional accusation. And this comes unanimously from a Commission composed of men who are not only trained in the law but regarded as leaders in the academic world of today.

The New York Times says that the Commission's recommendation amounts to a proposal to read Mississippi out of the Union. It adds:

"We can think of no suggestion less calculated to promote civilized race relations or to cool the inflamed passions that erupted in the Civil War."

The Washington Post says the recommendation "seems a drastic and, we think, dangerous remedy," and declares that cutting off Federal financial support of a State "is much more likely to foster resistance than compliance." The same editorial points out that a judicial question is involved and that "the normal manner of determining it is to let the Department of Justice seek rulings, as it is now doing, in Federal courts."

Maybe it is time for the members of the Civil Rights Commission to reread the Constitution.

Senator ERVIN. I did not realize we were this late. I don't believe I will be able to finish questioning you today.

Mr. BERNHARD. I am at your pleasure, or displeasure.

Senator ERVIN. I want to ask you a great many questions about the validity of David Lawrence's suggestion:

"Maybe it is time for the members of the Civil Rights Commission to reread the Constitution."

We have two witnesses today from Washington. I will ask Mr. Creech to consult with you first, so we can arrange some mutually convenient day. I want to hear these other witnesses from out of town who cannot come back without inconvenience. All Washington witnesses will be rescheduled for a later hearing.

Mr. BERNHARD. I appreciate this opportunity. I am excused, I presume, for the day. I will talk to Mr. Creech about it.

Senator ERVIN. Thank you for coming and giving your statement and your views on the matter.

Mr. BERNHARD. Thank you, Mr. Chairman.

Senator ERVIN. We will reconvene at 3 o'clock.

(Whereupon, at 12:25 p.m., the hearing was recessed until 3 p.m., on the same day.)

AFTERNOON SESSION

Mr. CREECH. Mr. Chairman, the first witness this afternoon will be Father Trafford Maher, a member of the Missouri State Advisory Committee.

STATEMENT OF FATHER TRAFFORD P. MAHER, S.J., ST. LOUIS UNIVERSITY, ST. LOUIS, MO.

Father MAHER. Mr. Chairman, if you will bear with me, it might help if I make a preliminary remark to give you the background out of which I speak.

For the last 12 years, moving in the field of human relations and groups relations in many parts of the United States dealing with business, industry, hospitals, labor management, teaching 6 weeks out of every year in a culture other than the United States, I think I have come to have some insight into our No. 1 domestic problem.

It is out of this background that my statement follows.

We meet in a troubled moment in history. Twenty million Negroes, U.S. citizens, and other minorities are clamoring for their rights.

Knowledge, insight, and general understanding skills are unfolding phenomena for each generation of men. As we experience this unfolding process today, there is a new kind of awareness of the depth of meaning in ancient truths about the unity of the human race.

Under the pressure of this new consciousness, the majority groups are smarting from painful guilt feelings resulting from past misunderstandings and concrete wrongdoings of long duration.

Simultaneously, there appears to have been generated a kind of panic which gives rise to fear and anxiety about the past and for the future.

In this mood, halfhearted decisions are falteringly made. Half-measures are taken in the human rights areas which in their own way only perpetuate the evils of the past.

Charles Malik puts it this way: "Nothing is more obvious than that history is decisively in the making today, yet the quality of decision is largely absent."

There is an ominous drift; people appear overwhelmed. It is as though the complexity and multiplicity of present issues are too much for the mind of man.

But if one thing is certain, it is where people refuse to decide, events will decide for them. And if personal decision is both difficult and risky, it is not at all certain that to allow events to decide impersonally although relatively easy, is not itself a decision involving the greatest risks.

In areas of the North and South, the majority group flounders in indecision and confusion.

Meantime, racial minority groups are responding to their newly gained insights into the same truths. Aware of the inconsistent and indefensible history of the majority group, rightfully impatient and irritated by society's slowness to share unconditionally what is properly an integral part of every American's inheritance, the racial minorities are moving forward with new strengths, new enthusiasm, and deep human aspirations.

The racial majority confronts the newly motivated racial minorities and the encounter to this moment has been only minimally productive.

Every possible societal device must be used to solve this troubled moment, to foster decisions of quality, and to make the total American democratic design credible at home and abroad.

Such a device at the Federal level of Government is the U.S. Commission on Civil Rights. It is imperative for this Commission to be granted by the Congress an extended life and broadened powers in order that it may aid the United States in clearing up her most severe domestic problem.

Up to date, the Commission has done significant work but it has become increasingly clear that it cannot meet the severity and magnitude of the civil rights problems of our country unless its powers are amplified in accordance with the specifications in Senate bill 1117.

While law alone cannot change the attitudes of men, nothing so rapidly crystallizes their conscience and changes their behavior patterns.

If adequate Government provisions are not forthcoming and if these provisions are not sufficiently meaningful to be effective, then violent, bloody conflict on a massive scale may well be the result.

For many deprived citizens, patience has run out. Injustice, inhumanity, and gross violation of basic American rights have stimulated a mood in many discriminated against citizens that will find its outlet in action—aggressive, hostile action.

Government must not be in the position that it allowed this to happen through neglect and indecision.

Senate bill 1117's proposal to extend the Commission for 4 more years and to give it some additional duties is a sound move.

The provision for the Commission's "clearinghouse for information" function and the process of providing advice and technical assistance to Government agencies, communities, industries, and individuals are most necessary.

The existence and functioning of a commission such as the U.S. Commission on Civil Rights shows our own citizens at home and subjects of other countries that we do actually mean what is said in the foundation documents of our country.

The process of bringing to light facts helps to reduce tensions and fosters a calm and reasonable climate in which effective and just solutions can be had in the civil rights area.

That this is important needs no explanation. In no other area does misinformation and misunderstanding so quickly breed fear and hatred. A public agency with continuing responsibility for bringing to light the facts is an absolute necessity.

I respectfully urge this subcommittee to use every appropriate means to foster Senate bill 1117.

Mr. CREECH. Father Maher, at the time the Attorney General appeared and asked for funds for the Civil Rights Division in 1959, he stated that in addition to the enforcement of the civil rights statutes, that the Civil Rights Division "will take on a program of liaison and of consultation with law enforcement agencies and other officials of the States in order to promote understanding of the problems and place the Federal and State responsibilities in their prospective."

Mr. White said, "We have in mind greater collection of factual information. We think without such activity, we cannot do the job."

Again, in 1962, testifying for the appropriations for the fiscal year 1963, the Attorney General stated that in the field of civil rights the department's basic policy is to seek effective guarantees and action from local officials and civic leaders voluntarily when investigation has disclosed violations of civic rights.

The Attorney General, when asking for appropriations for the Department of Justice Division in 1957 and at the same time the Civil Rights Commission, has indicated the Civil Rights Division is empowered to undertake, and is, in fact, already undertaking most of the functions which S. 1117 indicates are to be assumed by the Commission.

Is it your view that there is a duplication of effort?

Father MAHER. Mr. Chairman, I should like to submit first of all that an apparent parallel is not a real parallel. That which appears to be similar to the Justice Department is not necessarily that which actually happens in the Commission.

I submit for the record that whereas all facets of Government precisely as Government do have certain similar formalities about them, there is a very real distinction between that which pertains to the Department of Justice and that which is done by this Commission.

I would submit first of all that this commission is, by its nature and by its foundation bipartisan; that it has no "I owe any constituency"; that it is a research and factfinding body, not currying the favor or the nod of anyone and in so doing, it can bring to its job freedom and objectivity which cannot always be had in, shall we say, processes and

activities that are more basically and radically rooted in the political side of our American life.

Mr. CREECH. The members of the Civil Rights Commission, of course, are appointed. By the same token, the Attorney General can appoint committees to assist him.

What is your view with regard to the Attorney General's appointing committees to assist him?

Do you feel they might lack objectivity?

Father MAHER. Oh, indeed, sir, I would never imply that. I am sure the appointments would be most prudently made and the persons appointed would be allowed a great deal of freedom.

However, these appointees would necessarily be rooted in the Department of Justice.

The Commission as I understand it and as I have always viewed it is a body apart studying the truths, somehow in the general area of the executive branch of Government but not in any immediate sense connected with the executive branch.

It is factfinding. It is educational. It can use the powers of persuasion and it will have further powers if this bill is passed, but I would not imply that appointees in the Department of Justice were not free and prudent.

I would still say that the framework in which the Commission works is a freer framework. That would be my view.

Mr. CREECH. I am referring to those committees of private citizens which are appointed by the Attorney General from time to time.

Father MAHER. Yes.

Mr. CREECH. And not normally employees of the Department.

Father MAHER. I still view this Commission as a freer research kind of framework in which to operate.

Mr. CREECH. Now in those areas in which there is duplication of work, would you favor either the Division or Commission being dispensed with?

Father MAHER. No, I think there are many different kinds of ways in a country as complicated as ours; many different kinds of ways in which facts have to be ferreted out.

I think we cannot rely on any one way. I do not see this as the great disease known as government duplication nor this business of one organization getting into existence and then perpetuating itself forever.

I would still have to say that as with a patient, we must give him a diagnosis and similarly with respect to the approach to finding out about the ills of our society, we have to have many different kinds of diagnostic tools and some of these tools may be the same, and some ways different.

Mr. CREECH. Does it disturb you the Commission operates under rules of procedure which preclude an individual knowing his accuser and having the opportunity to confront his accuser?

Father MAHER. I am not informed about the fact in this question.

Mr. CREECH. I see. Is it your feeling that any individual who is accused of any act which might have serious adverse effect upon him or upon his reputation in the community should have the opportunity to know who his accuser is and to cross examine him?

Father MAHER. My general opinion about these matters is that generally speaking, the accused should have a chance to see and to know the accuser.

I would have to grant, without being very sophisticated in these matters, that there might well be situations in which this would not obtain. However, again, I must plead not very sophisticated in these matters.

Mr. CREECH. Now, Father, as a member of the State advisory committee, am I correct in assuming that your group has held various meetings throughout the State of Missouri?

Father MAHER. That is correct.

Mr. CREECH. At these meetings you do not have the power of subpoena.

Father MAHER. That is right.

Mr. CREECH. And you do not receive testimony under oath. Is that correct?

Father MAHER. That is right.

Mr. CREECH. Your proceedings are rather informal.

Father MAHER. That is right.

Mr. CREECH. And would you care to describe for the committee and for the record the manner in which you proceed at these meetings and the manner in which you elicit information upon which to base your recommendations to the Commission?

Father MAHER. I should be happy to do this.

Typically, and I should inform you that I think in the State of Missouri since I have been on the committee that we have had two public conferences, but typically, persons are invited to come. This situation is advertised. A given area of inquiry and concern is advertised.

Some people are specifically invited, and some are free to come unannounced.

The process that we follow is to have these interested persons share with the committee what they know to be the situation in the civil rights area in this or that county, in this or that city, this or that town; just as there will be people to address themselves in favor of civil rights, there will be people there to address themselves not so favorably inclined towards civil rights.

At the conclusion of such a confrontation we try to distill from the matters that have been recorded that which seems worthy of bringing to the attention of the Commission.

It is a factfinding sort of procedure. One has to use whatever techniques and tools he has, that is after the record is in to sort of sift what is fancy from fact, what is personality aggrievement from what is real violation of rights.

Mr. CREECH. Now, Father, could you offer specific examples of how you feel the Commission's expanded authority under these bills would be useful in solving civil rights problems?

Father MAHER. I think I could do that, particularly with respect to the new proposal of a clearinghouse function that is mentioned in the new bill. It is amazing how different cities and different States take for granted that other cities and States have common information and fact with respect to the civil rights area.

We make the assumption often that universities, colleges, different kinds of organizations have amassed and crystallized a great deal of research data and information in the civil rights area.

The simple fact is that many cities do not really know about other cities. Many parts of one city do not know about other parts of the same city.

I know of no place at the moment where a good job is being done of amassing research information and other kinds of data crystallizing these and specifically orienting them in the direction of civil rights problems, techniques for approaching these problems and hoped-for goals in the solution of these problems.

This, I think, would be a very great contribution to the general wholesomeness of our country's national life.

Mr. CREECH. Did you by chance, hear the testimony of Senator Harrison Williams yesterday?

Father MAHER. No, I did not.

Mr. CREECH. Senator Williams called for the Commission to establish field offices to work directly at the community level to organize, encourage, and coordinate full scale and positive programs to achieve the goals of equal opportunity in the field of voting, education, housing, employment, et cetera.

Is this the sort of thing you envisaged as a part of the clearinghouse and technical assistance operations?

Father MAHER. This might be a possibility, but I would not commit myself to that particular design until such time as persons very close to the situation had a chance to deliberate over this and figure out some feasible way of being most efficient and accurate in carrying out this particular function.

Mr. CREECH. Has your advisory commission made recommendations to the Commission or to anyone else concerning the desirability of expanding the functions of the Commission?

Father MAHER. Well, in a general sort of way we have let the Commission know how we feel about this.

We have not in any highly formalized document spelled out one, two, three, and four. But we feel not only in our State, but in many States that the need for this sort of thing is very clear.

As a matter of fact, there existed at one time before the existence of the Commission what was known as the Governor's Conference on Civil Rights. I believe it had been started by Mr. Harriman.

At the time I was associated with this, there were then 21 States involved. One of the great difficulties at that time was that we really didn't have a clearinghouse of information and so I see this as a very real need.

I should say at this time our problems are very much more intense than they were in 1946, 1957, and 1958.

Mr. CREECH. I realize that you testified earlier concerning areas in which there might be duplication of work; but in the event that Congress was to decide to allow the Commission to expire, do you perceive any great disadvantage to committees such as your own in working effectively as adjuncts to the Department of Justice if the Attorney General were to ask members in the various States to serve on such State advisory committees?

Father MAHER. Sir, at this time I could not intelligently take a position on that question for the simple reason that I am so convinced

that it is already too late for anything we have done. All we can hope to do now is to have some kind of salvage job that will be constructive.

I must at the moment take the position in terms of the general security of our country, that the Commission will survive and that it will survive with added powers and hence, I cannot really prudently in my own conviction entertain any alternatives to this.

Mr. CREECH. Well, you have not, I presume from what you have said, made a study of the operations of the Civil Rights Division since it was established in 1957. Is that correct?

Father MAHER. I made no detailed personal research study.

Mr. CREECH. So you really have no intimate knowledge of the operation of the Civil Rights Division vis-a-vis that of the Commission?

Father MAHER. Other than a general knowledge of how these things work at the State level as well as in other facets of government.

Mr. WATERS. Father Maher, I would assume then that you do not feel that the work of the Civil Rights Commission will be completed within a 4-year period.

Father MAHER. Well, you know the Ten Commandments came out quite awhile ago and that is not exactly a finished issue. I am not going to be so foolish or foolhardy to assume that the days of man's good treatment of man is going to be here, you know, just around the corner. But I should like to take the position that somehow significant progress could be made within the next 4 years.

I think I will take the position that I would not close the door on a permanent Commission, but if there was some way of not opening it too wide in order that we might confront now realistically the problems in front of us, I would say let's get another 4-year extension and then worry about the next step.

I am so afraid that if we go into a permanent commission now, and I am not so foolish to think we will be doing that, we will be doing well to get what we can get, but until 50 States confront the issues before us and work fast, we are in real trouble. I think from my experience in this room this morning that we are in much trouble, much more trouble than the subcommittee may sense.

Mr. WATERS. Do you feel the work of focusing attention on problem areas which has been done by the Civil Rights Commission could or would be done in the same type of manner by the Attorney General's Civil Rights Division?

Father MAHER. No, just because of the very nature of the difference between the operation of legal procedures in that division of Government and the purpose of the Commission.

Necessarily, when the Division of Justice focuses on something already you have a different formality on it than when somebody moves in to highlight, to spotlight, to ferret out facts and serve them up.

Sometimes, in the first instance, we must move in a not threatening way as far as human communications are concerned. The minute you bring something forward in a threatening way, in that minute communication diminishes.

The Commission can bring forward facts. They may be uncomfortable facts, but they are not necessarily immediately threatening to all parties concerned. When Justice comes in with facts, this already is a threat and this does very damaging things to human communication.

Mr. WATERS. And you feel that the makeup of the Civil Rights Commission representing as it does, various parts of the country, the southern viewpoint, northern viewpoint and other viewpoints is better fitted to do this than another branch of the Executive Government?

Father MAHER. I feel very strongly about this and as long as we are taking regional viewpoints, that whether it is a viewpoint that I find comfortable or discomforting, I must realize that viewpoint is a reality and it must be lived with and we must communicate over it.

I think that the Commission is admirably well suited to do this in a way much better than any division of Justice. Let me make clear I am not talking about the virtues of Justice.

Mr. WATERS. You were asked about the liaison proposed to be conducted by the Civil Rights Division of the Attorney General's section of law-enforcement officers and other people. Has it been your experience this has been effective in your area?

Father MAHER. When law-enforcement officials are used in the first instance?

Mr. WATERS. No, I am referring to the suggestion that the Attorney General's Civil Rights Division take over liaison with law-enforcement officers about problems that exist in their areas.

Father MAHER. Without putting any value judgments on my statement, I hope you would clearly understand that I mean this in no derogatory way, but when representatives of the Justice Department are confronting law-enforcement officers in a community this has about it quite a different kind of face than when persons from a Civil Rights Commission do this same job.

Again, the element of threat and I could not insist too much that the element of threat has an awfully lot to do with human communication and the quality of human communication has a lot to do with group problems, intergroup problems and personal problems.

Mr. WATERS. Perhaps you were here this morning when the suggestion was made it is necessary that any added authority or extension be given to the Civil Rights Commission because the President's Executive powers are now adequate to prevent discrimination in the utilization of any Government contract.

I am wondering if you care to tell us whether or not there presently exists the same discrimination in the awarding of their contracts and their being carried out.

Father MAHER. That this whole story of discrimination in these contracts has not been told is obvious every day in my area of the country; that there needs to be still another way of ferreting out facts, negotiations, et cetera, is very clear. It is very clear to me and my colleagues.

Mr. WATERS. Do you feel the extension of the Civil Rights Commission would serve as a useful vehicle to explore and to remedy any abuses which presently exist?

Father MAHER. Certainly, to explore and increasingly to remedy more. That there will still be left unremedied many problems even after the best possible job has been done is clear to me also.

Mr. WATERS. Thank you.

Father MAHER. Thank you, very much. It is a pleasure to be here, and I thank the subcommittee for its courtesy.

Mr. CREECH. Mr. Chairman, the next witness this afternoon will be Mr. Andrew McDowd Secrest, South Carolina Advisory Committee of the Commission on Civil Rights.

**STATEMENT OF A. M. SECREST, MEMBER OF THE SOUTH CAROLINA
ADVISORY COMMITTEE, CIVIL RIGHTS COMMISSION**

Mr. SECREST. Mr. Chairman and members of the subcommittee, before I came to Washington, I called other members of the South Carolina Advisory Committee to get their opinions as to the need for another lease on life for the Civil Rights Commission.

It was the consensus of the committee that the Commission had justified its existence and that, since its work is not done, had earned another term.

We have found the Commission's publications very informative and believe it is performing a needed service to the people of the country. Its staff members have been helpful to the South Carolina Advisory Committee without dictating policy or interfering with our operations as an "autonomous body."

I believe failure to approve this civil rights legislation would be interpreted by many citizens as evidence of congressional indifference to personal freedom. It would surely be so regarded by leaders in allied and so-called neutralist nations. Above all, it would be considered by American Negroes as an indication that their elected representatives were becoming indifferent to their aims and aspirations of first-class citizenship.

I view the work of the Commission as plowing that middle ground between racial extremists in America and seeking to redress justifiable grievances in the time-honored American way; through the courts and through legislation, based on facts and interpretations made available through the work of the Commission and its subsidiary branches: the advisory committees.

When white and colored factions are glaring at each other in Birmingham and demonstrating in scores of other cities, North and South, it seems to me that the need for an objective, factfinding agency, armed with necessary authority to get the truth, is greater than ever.

The South Carolina Advisory Committee, in my opinion, has made a significant contribution toward racial harmony in South Carolina. When we were appointed by the Commission, because former Gov. Ernest Hollings had some political reluctance to become identified with the Commission, our group may have been looked upon by the public with some misgivings.

I believe these misgivings have been replaced with respect and trust. I have heard almost no criticism of our committee and read of none in the press. We view our job as one of lessening racial tension through understanding and education. If I were to use words to describe our function, I would use such words as "ameliorate," "heal," "compromise," "educate," and "intercede." We keep open, or try to, the lines of communication between white and colored racial moderates in our State. We aim for a more informed citizenry in these matters.

We hold public meetings. We have nothing to hide. We have met in various cities around the State and have received cooperation from local authorities in our efforts to obtain information about integrated and segregated facilities. The information we obtain we release to the newspapers, radio, and television stations in South Carolina and forward to the Civil Rights Commission for their use.

So far as the South Carolina Advisory Committee is concerned, we have no reason to believe the Federal Civil Rights Commission has

been profligate in its spending. We are reimbursed at a rate that amounts to actual expenses. When we were informed that the Commission lacked funds to defray our expenses for the June meeting, we voted to hold it at our own expense. I am before you today at my own expense, so it is certainly true in South Carolina at least that the Civil Rights Committee operates out of dedication to a job, not for profit.

When one considers that the entire Commission operates on less than what it takes to build one intercontinental ballistic missile, yet deals with a human problem every bit as explosive as the nuclear cargo these missiles carry, he must conclude that it is money well spent.

The Committee limits its meetings to cases involving denial of civil rights because of race, color, or creed or because of injustice stemming from unequal protection of the law. Many of the people appearing before us allege police brutality or job discrimination. As the meetings are well covered by the communications media, the resulting publicity has had a healthy effect on curbing mistreatment of minorities. Our greatest value, I believe, lies simply in dramatizing the need for greater equality of opportunity to the people of South Carolina—who are innately democratic and fairminded—in all those realms of daily living with which the Commission concerns itself: voting, housing, education, employment, public accommodations, and administration of justice.

The South Carolina Civil Rights Committee, which consists by the way, of South Carolinians of both races of all political spectrums, from segregationist, to moderate, to liberal, believe in the American dream of individual freedom, human liberty, and equality of opportunity. We believe further that the Civil Rights Commission is an indispensable tool in translating this dream into reality.

I did not realize, Mr. Chairman, that I was going to be able to come until Monday and that did not give me a great deal of time because I was supposed to get advanced statements before coming here.

So I called some of the other members and asked them if they would hastily type something out; if they thought their existence was worthwhile and they would be justified in letting me know, and so I would like to put these in the record. Either I can read it or just hand it to you, if you like.

Mr. CREECH. Whichever you prefer.

Mr. SECREST. Suppose I read through some of this, and delete as I go along.

This is now supplemental testimony, that I wrote after I sent the main body of testimony over.

I wanted to give some specific examples of what I believe the South Carolina Advisory Committee, as a subsidiary of the Federal Civil Rights Commission, had achieved in my State.

Last year, the Negro leaders and members of the white community in the capital city of Columbia achieved an agreement which led to the peaceful integration of downtown lunch counters of Columbia. We are not claiming credit for that successful negotiation but we do believe we had indirect effect on the climate in the State which made those negotiations possible and I think to eliminate a source of domestic friction that has plagued other cities is a considerable achievement for the Civil Rights Commission.

Similarly, I believe that the public climate in South Carolina, which accepted Harvey Grant of Clemson, was also in some measure due to the moderating influence of the South Carolina Advisory Counsel.

The committee has heard a complaint from a Negro serviceman. You know, it is not always just the States that discriminate. The Federal Government also has people who discriminate, and one of our important functions has been to point out to the Federal Government where it also failed in this regard.

For example, a Negro serviceman participating in Exercise Swift Strike reported to us—I said “man”—we must have had 15 complaints—reported that during Exercise Swift Strike, we had an executive break, which means fellows can take a little time off from the field; that white soldiers who were using the—I believe it was the American Legion facilities on the post and that the colored soldiers were barred, and as a result of our having that information and forwarding it on to the Civil Rights Commission, which forwarded it to the appropriate power in the armed services, there was a directive to all Armed Forces personnel not to utilize these facilities which were on a discriminatory basis.

We have also received complaints about discrimination at the naval base at Charleston; again involving discrimination by Federal personnel and, once again, achieved some success.

In other activities, we have received a delegation of students from the Orangeburg, S.C., State College there, after they had been hosed down following sit-ins in that area, and believe that that is an important function to serve as a steam valve for people who otherwise would have no other recourse.

We have acted as a factfinding agency, holding meetings in various cities around the State to find out from elected officials, exactly what facilities are segregated, and what are integrated; what they believe the local climate is to lead to for the progress in this field.

For example, in Charleston, the mayor, Mr. Gaillard, explained to us that the golf courses in Charleston had been integrated in anticipation of or to head off a suit; they went ahead and integrated. The library there is fully integrated, and the fact that this is information that the average person, I don't believe, in the State, is aware of, and once they have become aware of this, it helps other cities to make a lowering of bars, also.

We believe that the facts gathered at these sessions have been useful to both the State and the Commission and that these hearings have themselves, created a climate of moderation and progress in South Carolina.

The following is a statement by Ira Kaye a member of the advisory committee:

He says:

Insofar as South Carolina is concerned, the Civil Rights Commission and the South Carolina State Advisory Committee, are necessary to continue progress in civil rights in this State. There is no comparative State agency, operating either directly or indirectly, in this field. A request made by the chairman of the advisory committee to the attorney general in the State for a consideration of a creation of a civil rights section in the attorney general's office was politely but firmly pigeonholed, and there is no prospect of any State agency involving itself in this field in the foreseeable future.

I would like here, to just comment on something that you asked the father a few minutes ago, about the Civil Rights Division in the Justice Department.

It seems to me that if people in the Justice Department were to deal exclusively with law enforcement personnel, that this would be a very limited, and a very narrow application of the job.

We do our job on a much wider basis. We try to deal with private individuals, community leaders, people in the field of education, and religion, and the professions, and so on.

In 1958, this law was passed, giving this authority to the Justice Department. I don't believe anyone—almost no one in South Carolina is aware of this but I think everyone is aware, through our work, of the value of the committee, obviously, of the Commission and what we can achieve.

With one or two notable exceptions——

I am quoting Mr. Kaye again, now——

such as the admission of one Negro student in Clemson College, and a school desegregation incident involving a non-Negro racial minority, called the Turks, there has been little progress in the civil rights field in South Carolina, although there has been consistent and increased pressure by minorities in this State, for first-class citizenship in all fields. The U.S. Commission, assisted by the State advisory committee, was undoubtedly instrumental in bringing about peaceful acceptance of Negro voter registrants in many counties where Negroes have never been allowed to register before. The mere existence of a Commission, backed up by definitive action by the Department of Justice in the last 2 or 3 years has aided those Negroes who desire to register as voters immeasurably.

He says, what I have just finished saying, a quiet pattern of desegregation of lunch counters and facilities in downtown department stores has taken place. While we were not directly involved in working it out, there is no question but that this ability to bring both sides together to discuss mutual problems, provide for confidence and acceptance for both races, which climate is most necessary for peaceful desegregation.

The existence of the State advisory committee and the U.S. Commission on Civil Rights has removed a good bit of pressure on the Department of Justice which would have been asked to intervene on the basis of raw and untested evidence, and the State advisory committee has been able to filter out many of this type of complaint, so the Department of Justice only gets complaints with strong supporting evidence, and data.

In the field of police brutality, the State advisory committee has been able to spotlight areas that have been kept dark in the past. If allowed to continue, this constant, unprejudiced publicity will, of necessity, lead to more public interest in police activities, with chances that police brutality will be reduced. This is a most necessary function, so as not to give birth to a group of Birminghams.

The State advisory committee has recently begun to penetrate into the imbalance between white and Negro income, and discovered that Federal funds have been utilized both to continue unfair segregation practices in the field of technical training and retraining.

I wondered if this was one of the things that the Senator was speaking of this morning when they were discussing this recommendation by the Commission about what funds should be withheld from what State.

This is an area now, that concerned me a good deal. Under the Manpower Training Development Act, which is financed mostly by Federal funds which funds were made available by law because certain counties in certain areas in South Carolina are depressed areas, and so forth; and underemployed, I suppose.

We are eligible for this money because of the existence of the Negro and yet he is not being given quite an equal treatment because he is roped off and segregated from the white technical schools. For example, if there are 15 white people who qualify through tests, etc., to take electronics courses, those 15 can be given a course in this particular field; but if there are 5 Negroes who are qualified for this training, which is not enough to make a class, because they hold segregated classes at an adult level, they are not capable—I mean, they are not permitted to take this course. That does not seem right to me. And that is what the Commission meant by changing the rules, or withholding the funds until some proper constitutional method is arrived at. That seems impractical and unreasonable to me. I don't think they meant social security payments, and all that. Mr. Griswold would know more about that, and Mr. Ervin, than I would. Persons most in need of job training, and the learning of new skills, are deprived of the opportunity by State agencies, receiving Federal funds not authorizing Negroes to participate, and not providing ample courses for Negroes.

If given a chance, the advisory committee, under the guidance of the Commission, would be able to document this condition and would be able to recommend corrective legislative and administrative procedures. The same holds true for the Federal Government, itself, which practices discrimination, particularly in military installations and the Department of Agriculture.

It is in the process of examining forthright complaints involving the Charleston Air Force Base, the Navy Base.

There are also indications that both Negroes and Turks working at Shell Air Force Base, are considering bringing their complaint before the State advisory committee in the near future.

If the U.S. Commission and the advisory committee is removed from the scene, there is a strong possibility that these individual groups, who have been content with public airing of their grievances, may seek other means of calling these honest grievances to the public's attention. The cost involved, both economically and morally, would be immeasurably high.

That is Mr. Kaye's comment.

The chairman, who is Mr. McIver, E. R. McIver, since he is a chairman, I think he should have a voice here.

He lists several reasons why he is in favor of the Commission being extended. The agricultural revolution has caused a mass migration of the Negroes from the farms to the cities, where cities are not prepared to handle them, bringing up many problems that Congress and the Nation should be informed of by the Commission. Because of the small voting strength of the Negro population in the South, politicians are not interested a lot in the Negro, and consequently, the Negro does not always have his interests protected in our Government. This can be corrected by a greater interest of the Negroes in politics, but until that happens, he needs someone to look after his interests for him.

That is not true in Chesterfield County, by the way. The Negro vote is very highly sought after there.

As far as I can determine, there is no one for a Negro or a poor white to appeal to if his civil rights are violated, except the Civil Rights Commission. Most people in the South are decent, Christian, law-abiding citizens, who will do the right thing if given the chance.

The Civil Rights Commission is in an excellent position to keep the public informed. Because of the increase in income, and the improved educational opportunities for the Negro, his demands are going to increase.

This means that the race problem is going to get much more acute as time goes by. Some agency is going to have to do a lot of study and planning to keep our society on an even keel.

There are very few lines of communication between the Negro and the white races. In some areas, the line is completely closed. The Commission can bridge this gap, and as conditions improve, communication becomes a normal and accepted procedure.

In too many race problems, the white man loves to think for the Negro. This cannot be done. The Civil Rights Commission gives the public a chance to hear some of the thoughts of the Negroes, expressed by some of the leaders of the Negro race.

The Civil Rights Commission acts as a watchdog, making the public and the Government aware and the agencies aware that their actions are being observed and subject to scrutiny. This will promote restraint, and encourage proper conduct in many cases.

If the life of the Civil Rights Commission is extended, I would like to see it work more closely with the State Government. A member of the State legislature and an employee of the attorney general's office of the State should be invited to serve on the State advisory committee so that better liaison between State and Federal Governments might be achieved.

I believe that is about all.

I will dispense with the last.

Mr. CREECH. Mr. Secrest, I believe you indicated that you have not made a detailed study of the operations of the Civil Rights Division of the Justice Department.

Mr. SECREST. That is right.

Mr. CREECH. And you are a newspaper man, not an attorney.

Mr. SECREST. That is right.

Mr. CREECH. After the Civil Rights Division was established in 1957, in addition to enforcing the civil rights statutes, the Division was empowered to consult with officials of the States in order to promote understanding of civil rights problems, collect information, and seek effective guarantees from local officials and civic leaders. Of course, we are all aware of the activities of the Assistant Attorney General, in the recent disturbances in the South. In those instances in which there is duplication of effort or duplication of work, would you favor abolishing such duplication?

Mr. SECREST. No, I think we need more rather than less work on civil rights, and I believe the Justice Department probably can put to very good use the people they have, and I believe the Civil Rights Commission can do the same thing.

I believe it would benefit both the Department of Justice and the Commission to have advisory committees, or people who can work with them.

Of course, I don't know much about the Justice Department.

Mr. CREECH. But you would favor this in all areas of Government operation?

Mr. SECREST. No. I believe in checks and balances and watchdogs watching watchdogs, so, although I would not be in favor of constant proliferation of Government duplication, I think in this particular case, where we are doing too little anyhow, I believe we need more rather than less in civil rights.

Mr. CREECH. There has been a great deal of discussion during the hearings, about the rules of procedure of the Civil Rights Commission, which, among other things, deny an individual the right to know who his accuser is, and the opportunity to confront him and cross-examine him.

Mr. Justice Black and Mr. Justice Douglas, dissenting in a case which sustained the constitutionality of the Commission's rules, stated that denial of the rights of confrontation and cross-examination in this case, is a violation of due process of law.

Complaints were filed before the Commission against the registrar witnesses but the registrars were denied the right to confront their accusers. If true, the charges would constitute a Federal criminal violation. The witnesses are thus put in a position of being required to testify, without being able to confront their accusers, to something which might result in a criminal prosecution.

I should like to know, sir, in your view, is it desirable for the Commission to maintain such a rule of procedure?

Mr. SECREST. I wonder if that is applicable to what we do in the advisory committee.

Mr. CREECH. No. Of course, your witnesses are not sworn; you do not have subpoena power.

Mr. SECREST. I see; because what we do—I would rather limit my comments about the advisory committee about which I know something. When we hold a hearing, there are certain times that we will hold executive sessions, to protect the identity of someone who is complaining because in a civil rights matter, the Negro quite often is subject to such powerful forces of retaliation, that he would really be deprived in all practical purposes, of saying anything, if his identity were known. So sometimes, we will protect him by not divulging who he is, and yet, he will talk about somebody to us, you know, in executive session, which does not harm the other person.

I would hesitate to say about the Commission until I knew what the specific case was.

Mr. CREECH. Of course, what Mr. Justice Douglas and Mr. Justice Black were talking about in this particular case, was not an executive session, but a public session, where the information is being disseminated, where an individual's reputation is at stake, and perhaps, might be adversely affected.

Mr. SECREST. Well, in this public session, the person accused would know who was accusing him?

Mr. CREECH. He would not know. He would not be told. The person making the accusation would not be there to make the accusation before him.

Mr. SECREST. I see what you mean. I would rather withhold judgment on that. I just really don't know.

Mr. WATERS. Mr. Secrest, perhaps, while you are withholding your judgment, I might suggest to you the rest of the opinion which has been cited to you.

It is the case of *Hannah v. Larche*, and while you heard about the dissenting opinions of the Court, the majority of the Court held and ruled that it was perfectly all right for the Commission to make that type of ruling. They held the Commission had power to promulgate the rules in question, and that the rules were constitutional.

The Commission exercises an investigatory and not a judicatory function.

It was suggested in the course of the opinion that Congress authorize the Commission to promulgate the rules because legislation establishing the Commission specifically mentions certain safeguards, which must be given to witnesses, and confrontation and cross-examination are not included; and that a bill embodying these rights was defeated by the Congress at the time of the passage of the Civil Rights Act of 1957.

It further went on to say that the requirements of due process vary with the type of proceeding involved; that historically, investigatory hearings are not surrounded by confrontation and cross-examination, and this is true in legislative, executive, and administrative hearings.

Would that tend to establish a judgment on your part?

Mr. SECREST. Yes. That sounds very reasonable to me, but I don't imagine the Justice Department is too concerned about what I think on that matter. That sounds more like a legalistic decision, and I would just rather the Justice Department would make that decision. It does not upset me.

Mr. CREECH. Would it not upset you if you were accused of some heinous crime, of something for which you might be prosecuted criminally and not have the opportunity of knowing who was accusing you; not have the opportunity to confront that person and cross-examine him?

Mr. SECREST. That would very well upset me.

Mr. CREECH. Well, those are the rules under which the Commission operates, and Mr. Justice Black and Mr. Justice Douglas, notwithstanding the majority opinion, indicated they felt this was a serious deprivation of due process.

As I said, when I read the dissenting opinion, these are the rules the Supreme Court has upheld; these are the rules by which the Commission operates. I am asking you, as a member of the State advisory committee, as a private citizen, and as an American interested in civil rights, if it does not distress you to hear that there is a proceeding in which Americans find their reputations being attacked, in which they are accused of committing heinous crimes, and yet not given an opportunity to know who is accusing them of these crimes, and without being given an opportunity to confront those persons and cross-examine them?

Mr. SECREST. Well, if I measure that against what the majority opinion, which was what? Seven to two in favor? I cannot help but think those seven men must have had pretty good legal basis on which they based their decision, and it did not sound that bad when they advanced their reasons for it so I would just rather they speak for

themselves. When I hear what you read to me and realize that other legislative investigations of this sort go by those rules, I don't see why this particular Commission should not abide by the same law, if that is the way they all operate.

Mr. CREECH. I don't think you can say they all operate that way, because the situation is not analogous.

Mr. SECREST. Then I would rather not comment.

Mr. CREECH. I was interested in having you tell me, as a member of a State advisory committee, advising a Federal agency concerned with civil rights and civil liberties, whether you feel it is desirable for an individual to have the right to know who is accusing him of committing a crime, and to have the opportunity to cross examine.

Mr. SECREST. Well, I just don't know that I am really equipped to answer that question to my own satisfaction. If I cannot answer it to mine, I should not probably answer it to yours.

I do think that that, in itself, would not lead me to vote against extending the life of the Commission 4 years.

Mr. CREECH. Would you feel, though, that it would be desirable for the Commission to have rules which would permit individuals to know who accuses them of crimes and to give them an opportunity to cross examine?

Mr. SECREST. Well, I would rather study the way the Commission operates before I answer that question.

I might say "yes" now, and then find out later that I did not think that at all, after I studied it, so I think I ought to reserve my judgment on that.

Mr. WATERS. Mr. Secrest, in the course of your meetings, if any adverse information is suggested, reflecting any activities of any other person, I assume you make this information available to the person affected; you give them a chance to tell their side of the story?

Mr. SECREST. Oh, yes. We always do that. Any complaint about our being unfair—of course, he says this is not an analogous situation, because they are not sworn, when they come before us, and all that. That has bothered some of us at various times; probably there is no ideal answer to that, but what we always do is extend an invitation to the person who has been accused, to appear before us, preferably at the same time, to answer at the same time face to face.

If that cannot be done, then we always ask them to appear before us at the next meeting, and give them an equal opportunity to answer.

You could say that anytime anybody said anything unfavorable about somebody else, and it hits the headlines, that we are taking unfair advantage of people, and it is our hope that through publicity, that we can help shed light on the situation; the State by itself, might be subject to character defamation and whatnot. But I don't know any perfect answer to that.

Mr. WATERS. Your organization works on the principles of persuasion, does it not?

Mr. SECREST. Yes.

Mr. WATERS. And education, rather than a prosecutive arm. You find that elements of persuasion and face-to-face contacts with individuals have been working effectively in your area?

Mr. SECREST. I think it has been effective, and, as I say, no one is complaining that they have been mistreated or misused.

Mr. WATERS. A great many of your staff—I think you stated you are here at your own expense? That your people were not paid?

Mr. SECREST. That is right. We are reimbursed for actual expenses.

Mr. WATERS. This would tend to eliminate any possible duplication with the Civil Rights Division because, of course, these people do get paid.

Mr. SECREST. Yes.

Mr. WATERS. You feel you serve a useful purpose in that connection—whatever information you get filtered out, that you can make it available to them?

Mr. SECREST. Right.

Mr. WATERS. Or to the Civil Rights Commission?

Mr. SECREST. Yes. I am not quite sure I follow you about who you said did get paid. I thought he was speaking about advisory committees in the Justice Department. I assume they would be paid. Does the law provide they be paid?

Mr. WATERS. It is a thing that might be set up. We don't know what provisions would be made for them.

Mr. SECREST. I see no reason, really, to go into that, if the proposition is working very well, as it is. I see no reason to change it or repeal it.

Mr. WATERS. I think you pointed out, at least in your situation, the Civil Rights Commission or the Committee is the only place available for many of these people to go to?

Mr. SECREST. It is the only place I know of.

Mr. WATERS. Would you prefer that the Civil Rights Commission be retained as a permanent body of the Government?

Mr. SECREST. Ideally, I think it should be retained on a permanent basis, permanent in the sense of as long as it is needed; but from a practical point of view, this particular bill we are talking about, S. 1117, provides a 4-year extension, and that might be very wise to take what you can get.

Mr. WATERS. Thank you, Mr. Secrest.

Senator ERVIN. All the witnesses having been heard, this committee will be adjourned until June 5, 1963.

(Whereupon, at 4:20 p.m., the committee was adjourned until Wednesday, June 5, 1963, at 10:30 a.m.)

CIVIL RIGHTS COMMISSION

WEDNESDAY, JUNE 5, 1963

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:40 a.m., in room 318, Old Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee) presiding.

Present: Senator Ervin (presiding).

Also present: William A. Creech, chief counsel.

Senator ERVIN. The subcommittee will come to order.

Call the first witness.

Mr. CREECH. Mr. Chairman, the first witness this morning in the Honorable Clifford P. Case, U.S. Senator from New Jersey.
Senator Case.

STATEMENT OF HON. CLIFFORD P. CASE, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator ERVIN. Senator, we are glad to welcome you to the subcommittees.

Senator CASE. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I appear in support of the extension of the life and the broadening of the functions of the Civil Rights Commission. I believe the Commission should be made permanent, as provided in S. 1219, of which I am cosponsor. At the very least, it should be extended for the 4-year period, which would be provided in S. 1117, and as requested by the President.

The events of the last few weeks, in the North as well as the South, are, I believe, compelling testimony to the need for the Commission. As Vice President Johnson recently put it:

One hundred years ago the slave was freed. One hundred years later the Negro remains in bondage to the color of his skin.

The Negro today asks justice. We do not answer him * * * when we reply to the Negro by asking "patience."

The Vice President went on to point out that the solution to the dilemmas of the present do not rest on "the hands of the clock." As he said, "The solution is in our hands. We must set about," he warned, "the business of resolving the challenge which confronts us now."

The U.S. Civil Rights Commission, Mr. Chairman, has, in my view, an important role to play in achieving that solution. Set up to investigate complaints, we make studies, and to appraise the laws and policies

of the Federal Government with respect to equal protection of the laws under the Constitution, the Commission was directed to advise the President and Congress of its findings and recommendations.

Pursuant to that responsibility, it recently issued an interim report recommending, among other things, that the President and the Congress "consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State which continues to refuse to abide by the Constitution and laws of the United States; and, further, that the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi, until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States."

In all the circumstances outlined by the Commission, that recommendation seems to me eminently reasonable and justified. Indeed, as I think the chairman knows, I have myself repeatedly joined in introducing legislation which would withhold Federal funds from specific federally assisted programs where State and local officials refuse compliance with the law.

It is unfortunate, I think, that the initial reports, indeed the President himself, interpreted the recommendation of the Commission as a request that the President cut off all Federal funds from the State of Mississippi. I believe Commission spokesmen have since testified to the intent of the report, which was simply that the President explore his authority to withhold Federal participation from specific programs operated on a segregated basis.

I also concur, Mr. Chairman, in the Commission's belief that "there is an overriding constitutional obligation to make certain that Federal funds are spent in a manner which will benefit all citizens without distinction."

The Commission's report cited a graphic example of failure to discharge that obligation in the Federal Aviation Agency's grant of \$2,180,000 for the construction of a jet airport to serve Jackson, Miss., without questioning the airport's plan to build separate eating and restroom facilities.

In pointing out such weaknesses and failures in carrying out national policy the Commission has performed a most useful service.

Further, the Commission in its broad inquiries into discriminatory practices in voting, education, housing and the like has illumined some less pleasant aspects of American life. That they are discomforting is itself an indication of the need for attention to them.

In this connection, I point out that the Commission has held hearings in the North as well as the South, the East as well as the West. From personal contact with Commission officials in connection with a hearing in Newark, N.J., I know how carefully and how responsibly they have gone about them.

This factfinding function, I believe, should be strengthened so as to permit the Commission to serve as a national clearinghouse for information and to provide advice and technical assistance to government agencies, communities, industries, organizations, or individuals in such fields as voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice.

Finally, the Civil Rights Commission is a vital conduit in com-

munication between our citizens. In some cases, our Negro citizens have nowhere else to turn. At the same time, it provides information of which the community at large is too often unaware. Its reports and activities have already helped to promote reasonable solutions to difficult problems.

The Commission is a useful and necessary prod to the executive and the legislative branches, to the conscience of the Nation as a whole.

All change is unsettling, even change from worse to better, but there are some things, and the existing pattern of discrimination is one, which ought to be unsettled.

I believe, Mr. Chairman, that for those who think that our present social patterns in regard to race relations ought to be unchanged ought to oppose with all their strength the extension of the Civil Rights Commission. Its extension will unquestionably hurt the cause in which they believe. On the other hand, Mr. Chairman, I am certain that those who believe that racial discrimination is evil as well as unconstitutional and ought to be eliminated as quickly as possible should certainly support the extension of the Commission's life and the broadening of its charter.

I think, Mr. Chairman, the time has come when we ought to speak quite plainly about where we stand. If we are for continuing segregation in American life, let us say so and let us say so openly. Let us not oppose such relatively innocuous though mildly helpful measures as the Civil Rights Commission on any except the real ground.

I can understand those who fear that the rising bitterness surrounding our racial relations in this country may erupt in violence. I share this concern, and yet I think we should all have a far greater concern about continued inaction and the perpetuation of the cruelties and injustices of centuries toward many million human beings.

I too share concern about the picture of America which our racial difficulties are carrying abroad. I wish it weren't so. But what really concerns me is the continued brutalization of all of us in America who have been guilty of this degradation of our fellow human beings for so many generations. We, I think, cannot keep this up without destroying ourselves, and, if we do this, the image we project to the rest of the world won't matter very much.

Mr. Chairman, I appreciate very much the opportunity to express my views which I am sure come as no surprise to you on these important matters.

Senator ERVIN. Senator, I notice that you endorse the proposal of the Civil Rights Commission that Federal aid of all kind be cut off from the State of Mississippi until the officials in Mississippi conform their thoughts, words, and deeds to those entertained by some on the Washington level.

Do you realize that cutting off these funds would cut off all of the old-age assistance to all the old people who are depending on such assistance to keep a roof over their heads, clothing on their backs, and food in their stomachs?

Senator CASE. Mr. Chairman, I attempted in my presentation in chief to explain exactly how I felt about this. As I pointed out, as Dean Griswold and Mr. Bernhard pointed out in their testimony before you not very long ago, the suggestion of the Commission is specifically and only that the President explore the legal authority that he has to withhold funds from Mississippi.

Dean Griswold further—and I think this is perhaps the best evidence as to the Commission's intention—made it very clear that he and the Commission members in addition to him had no intention of such action in regard to the citizens of Mississippi but that they felt very strongly, and I share that feeling, as I said earlier, that it is unjust for citizens of this country to be compelled to pay taxes which are to be disbursed in segregated ways which exclude them, and I think this very definitely applies to particular programs in Mississippi.

Senator ERVIN. Well, Senator, my question was whether you thought that they ought to go as far as cutting off old-age assistance to all the people in Mississippi, white and colored, over the age of 65 who are now drawing old-age assistance.

Senator CASE. I am not aware, Mr. Chairman, that this is a matter which has been handled in a discriminatory way. I don't think the distribution of old-age assistance, which is based entirely on a formula equal to all, is a segregated program or so operated, nor does the Commission, as the Commission told you.

Senator ERVIN. But Dean Griswold admitted that there wasn't any evidence in their statement which indicated that they were making any distinction between one fund and another.

Senator CASE. Well, I think what the Dean said was that perhaps the language, if it had been anticipated it would be construed by anybody in the way apparently some people have unfortunately construed it, should have been more clearly stated but he made it very clear that whatever the unfortunate nature of the language itself, the Commission's intention was not as the chairman suggests.

Senator ERVIN. Well, he admitted that very many people and very many newspapers, including the New York Times, Chicago Tribune, and, I believe, the Los Angeles Examiner, and multitudes of other persons—

Senator CASE. Including the President of the United States.

Senator ERVIN. Including the President of the United States, that is right. Well, certainly, Senator, don't you agree with me that it would be very bad to cut off funds to people on old age assistance, funds granted to the State to control tuberculosis and to attempt to eradicate the venereal diseases, and funds for aid to dependent children in order to force by coercive processes the concepts of Washington on the localities?

Senator CASE. In the first place, I don't accept the idea that this is a coercive action. I think that to the extent that this thing is done, it is done to prevent an outrageous injustice in requiring Negroes, for example, to pay taxes which they don't have the benefit of for programs which are discriminatory. And to the extent that this is so—this is my belief and I think it would be the Commission's belief—it is not a punitive action but an action in furtherance of just plain simple justice.

Senator ERVIN. Well, Senator, you state you don't think it is coercive to threaten to say if you don't do as we think you should do, we will cut off your funds.

Do you think this is not coercive?

Senator CASE. Well, it seems to me—again we ought to I think look at exactly what we are talking about. You can say that it is coercive. If you say that the Federal Government would not permit tax money contributed by Negroes as well as whites to be used in a

program for building hospitals from which Negroes are excluded.

If you say that it is coercive, then I say that I favor coercion. I do not apply that term to it. I think it is a matter of simple justice.

Senator ERVIN. Then for the life of me I cannot understand how it is not coercive to say to a State, if you don't change your customs and ways so as to conform to the way Washington thinks that they ought to be, we will cut off the grant we are giving all other States in the Union. If that is not coercive, I hope the Federal Government will never adopt any coercive policies.

Senator CASE. I think I have made my position very clear and I think that the Commission, for the present purpose the Commission's view is the thing that is important here in any event—and I think I have made and Dean Griswold and the director of the Commission staff have made their position very clear.

Senator ERVIN. I don't want to get into an argument with my good friend, but he talks about the opposition to the extension of the life of the Civil Rights Commission coming from people who are opposed to any change in social practices.

I am not quoting exactly, but that is what I understood him to say.

Senator CASE. I said if I were opposed to changes in social practices in regard to race relations in this country, I would certainly oppose the extension of the Commission.

Senator ERVIN. Well, I hope the Senator wasn't intimating that only those who are opposed to social changes are in opposition to the extension of the life of the Commission.

Senator CASE. I didn't say that specifically. I wouldn't make any such broad general statement as that, but I do think that the opposition to the relatively innocuous, as I said, though I think mildly helpful, agency that we are talking about here is largely based not upon the thing itself but rather upon a feeling that anything which is conducive of change ought to be opposed. I think this is generally true.

I am not the man to ask questions at this hearing, and so I of course will not ask——

Senator ERVIN. You may ask me——

Senator CASE. Oh, no. This would be impertinent, and even though I am a Member of the Senate and thereby perhaps immune from some of the disabilities that a witness ordinarily has, I wouldn't take advantage of that.

Senator ERVIN. Frankly, I don't know of a single recommendation for legislation that the Civil Rights Commission has made to the Congress which was not simply a rehash of a recommendation made in the past by others. I don't know of a single original recommendation that they ever made.

Senator CASE. Well, Mr. Chairman, we have been dealing with this subject for many many years, for decades. If they have made no recommendation that at some time has not been made by others, perhaps that is not surprising.

I think the significance of the matter is that this agency composed of outstanding men with great wisdom and on the basis of experience gained from careful studies in many parts of the country, has made these recommendations and support what perhaps has been suggested before as important. I would say that what we have suggested is a very minimum.

Senator ERVIN. I would like to say in defense of those of us who do not believe in the extension of the life of the Commission that I think we are essentially fighting for freedom and liberties of the American people.

Every recommendation that the Commission has made either involves robbing the States of powers and functions which they have exercised under the Constitution or robbing individuals of some of their most precious rights.

I was somewhat gratified to see in his dissenting decision in *Peterson v. City of Greenville* that Justice Harlan had this to say:

Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations, are things all entitled to a large measure of protection from governmental interference. This liberty would be overriden in the name of equality if restrictions of the amendments were applied to governmental and private action without distinction. Also inherent in the concept of State action are values of federalism, a recognition that there are areas of private rights upon which Federal power should not lay a heavy hand, and which should properly be left to the more precise instruments of local authority.

I want to thank the Senator for his appearance here. If he has any other observations, we will be glad to hear them.

Senator CASE. In that case Mr. Justice Harlan, whom I greatly admire as a fine judge, as a personal friend, took a position which I don't think I would have taken—I know I would not have taken—on the facts.

As to the general statement that he makes, I think that it is perhaps unexceptional. But I don't think it applies here because I think with the majority of the Court in that case what we had was in effect State action and therefore I just disagree with the Justice in his interpretation of the facts.

Senator ERVIN. Well, it seems to me rather strange, though, that the majority of the Court would say that it would be presumed, in fact, be a well-nigh conclusive presumption not subject to rebuttal, that owners of places of public accommodation in exercising what up to this moment was their legal right to select their customers were acting under laws which were null and void rather than as a result of an exercise of their own rights.

It is also astounding to me that in the case of a Louisiana municipality where there was no ordinance prohibiting the desegregation of restaurants, it was held that the order of the mayor, even though it was not backed by any action of the town council, constituted State action. That is a rather great extension of the meaning of State action, and one which lends itself to even greater extension.

It seems to me a terrible thing when we have a program such as the civil rights program, which is based on the theory that its policies cannot possibly be implemented unless all Americans are robbed of some of their most precious rights.

I thank the Senator.

Senator CASE. Well, I, of course, disagree with the Senator completely as to robbing essential and precious rights by this legislation or by other measures which I know the Senator disagrees with, that I have been a party to proposing and still sponsor strongly. This does not affect my deep regard for the Senator personally.

Senator ERVIN. I certainly think that if the Congress would adopt the recommendation of the Civil Rights Commission and deprive landowners and property owners in the District of Columbia of determining to whom they should sell their property, that would be depriving them of their precious economic rights.

Senator CASE. Well, the chairman, I am sure, doesn't mean to give any impression beyond the facts in that case.

What the Commission recommended in regard to the District of Columbia sale of real estate was that it shouldn't be done with the assistance of brokers who are in effect exercising a State authorized function as an individual. As the Commission and Dean Griswold pointed out, if I want to sell to you without a broker, I can do it.

Senator ERVIN. Only if you have a one- or two-family property.

Senator CASE. Well, we are talking—I assume you are talking about private homes.

Senator ERVIN. I think whenever the Government undertakes to tell people to whom they can sell their property, the Government is reducing them to a status of economic bondage.

Senator CASE. Well, just so long as we know exactly what we are talking about, and there is no misunderstanding, I am quite satisfied to leave the record as it stands.

Senator ERVIN. The Commission has recommended a regulation under which this would result: If an owner of a private one-family dwelling in the District were to go to a broker and say "Since my home is situated in an exclusively white neighborhood and my neighbors have been good to me and they feel that if the property is sold to anyone other than a white person the value of their property is going to be seriously impaired, and furthermore, their children are to be deprived of the right to have as their associates members of their own race, I am asking you to sell my house to a member of the Caucasian race in preference to a member of any other race." If that broker complied with that instruction for the sale of that house, he would be deprived of his right to earn a livelihood in his chosen profession.

Senator CASE. The right to earn his livelihood in a certain fashion, which I think myself is evil, which I think myself is contrary to basic decencies which we have got to recognize now transcend all else; yes.

Senator ERVIN. Well, to my mind, the right to, to quote, "use and dispose of his property as he sees fit," is one of the most basic rights and is the only right which gives an American economic freedom and prevents him from being an economic slave.

Senator CASE. Rights of property are very important but, I don't want to be a party to putting one right above another. This doesn't interest me. But I do think that the suggestion of the Commission here which, as you point out, is just a suggestion—they are bound to make suggestions as they see suggestions ought to be made by the statute under which they were constituted—does not go as far as the chairman might suggest. I know he and I wouldn't disagree about the facts—just the impression created by our colloquy is the only thing I am concerned about—the individual still can sell under the Commission's recommendations to another private citizen. He couldn't use a licensed broker.

Senator ERVIN. He couldn't even instruct the —

Senator CASE. That is right.

Senator ERVIN (continuing). Broker as to the race of the man to whom he desired the sale to be made.

Senator CASE. That is right.

Senator ERVIN. Thank you.

Senator CASE. Thank you, Mr. Chairman.

Senator ERVIN. The Chair is delighted to know that some seniors from the West Side High School of Omaha, Nebr., are paying the committee a visit this morning and we will be delighted to have them stand and be recognized at this time. We are delighted to have you all with us and we are sorry that other duties prevent your very fine and able Senator, Senator Hruska, who is a member of this subcommittee, from being present with the subcommittee this morning.

Thank you very much.

Mr. CREECH. Mr. Chairman, the next witness is the Honorable John Stennis, U.S. Senator from Mississippi.

Senator Stennis.

STATEMENT OF HON. JOHN STENNIS, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. Mr. Chairman, just one introductory statement before I start on a statement that I prepared, and as a fellow lawyer and public office holder over a period of years with the chairman and with all due deference to the members of this Commission that I am going to refer to, I believe that their recommendations, some of them, especially ones with reference to my State, are a most flagrant violation of the entire spirit as well as most of the letter of their authority under the law that I have ever seen.

These men are certainly honorable men but some of their recommendations I think are an outstanding illustration of how all of us are subject to being obsessed with the mission or power that we might be exercising and run by the lights of caution as well as the well-marked constitutional highway signs.

A great part of my statement is going to be directed toward the special recommendation that they made with reference to my State. In making that preparation, if I may say to the chairman, one of the finest brief statements that I have heard or read in a long time was the chairman's remarks that he made in the opening of these hearings.

I think they were made at that time, the opening, I know the early part, for which I commend him very highly. I wish that all citizens could have a chance to read and ponder, if I may say, the chairman's very wise and very able remarks.

Now, Mr. Chairman, and members of the subcommittee, I appreciate the opportunity to appear here today and express my opposition to the two bills, S. 1117 and S. 1219.

I vigorously opposed the law enacted in 1957 which created this Commission and have opposed its extension in the past. The history of this agency—and its one-sided adherence to concepts which are fostered and dominated largely by political expediency—have only served to reinforcement my judgment that the Commission is neither necessary nor desirable. This is my conviction, both as a Senator and as a citizen of the United States, and I think that to extend the life

of the Commission and to give it added and expanded power would be a grave disservice to the entire Nation.

The Staff Director of the Commission, in his recent appearance before the subcommittee, endeavored to justify its further extension by saying that there is a need "for an agency able to give the kind of advice and assistance which will contribute to peaceful and permanent solutions to racial problems."

Even if I should agree with this very dubious statement, I would be compelled to say that the Commission on Civil Rights does not, on the basis of past performance, fit the description which the Staff Director gave.

One more word with reference to the creation of this Commission. The chairman will well remember the debates that went on when this bill was originally passed, the spirit behind its enactment, the cloak-room conversations and understandings that this would be largely a factfinding, factfinding and study group, and when they came out with some of these recommendations, especially this one concerning my own State, so far beyond its power and so far beyond the Constitution, it seems to me that if there is any lingering doubt in the minds of anyone who really studied it, that that doubt should have been completely dissipated with reference to the wisdom of extending the life of this Commission composed of a group with the inclination that these men have.

On the record there is certainly nothing in the Commission's activities which would indicate that it has either the ability or the desire to bring about "peaceful and permanent solutions to racial problems."

On the contrary, its activities in the past have been well—and perhaps designedly—calculated to foment strife, turmoil, and bitterness and to pit people against people throughout the length and breadth of this great Nation of ours.

And the bitter experiences that we are having today, Mr. Chairman, that have been generated here in the past few months and have week to week been spreading all over the Nation, some of the origins, some of the encouragement, some of the ideas of it came from the activities of this very Commission.

Now, the Commission perhaps achieved the epitome of absurdity in its recent recommendation that Federal funds be withheld from a sovereign State of the Union because the Commission—acting as prosecutor, judge, and jury—came to the unilateral conclusion that there were open and flagrant violations of constitutional guarantees in the State of Mississippi.

The Commission in its interim report of April 16, 1963, urgently requested that—

the Congress and the President consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State which continues to refuse to abide by the Constitution and laws of the United States.

Even this recommendation for a bill of attainder—for that is what it is—did not satisfy the misguided zealots on the Commission. They felt compelled to go further and recommend that—

the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi, until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States.

The Commission was not even judicial or fair enough to suggest that an impartial determination be made as to whether the State of Mississippi was guilty of this outrageous charge. They acted upon an assumption of guilt and shifted the burden of proof to the State of Mississippi to demonstrate its innocence.

What confidence, Mr. Chairman, can be imposed in an agency which would attempt to further its misbegotten concepts of constitutional rights by such a flagrantly unconstitutional method?

At the very least the Commission comes before the Congress now as a legislative and judicial freak—a worse than useless appendage to the vast array of existing and overlapping of the Federal agencies.

Let me return to the extreme and absurd recommendations which the Commission made concerning the State of Mississippi. The Commission's statement was met—immediately and almost unanimously—by a literal torrent of repudiation, condemnation and careful disassociation. This came from every source and quarter—from the President of the United States, from the majority leader of the Senate, from Members of Congress on both sides of the aisle, and from the editorial pages of our leading newspapers and other publications.

I think, Mr. Chairman, that that should evidence the strength of our Nation, the immediate, forceful, complete repudiation of such a transgression of this kind starting with the President of the United States, extending across the board of public life, into the editorial rooms of the leading newspapers of our Nation, throughout the Nation, not just in one area.

The analysis of one commentator deserves special comment. He pointed out that if a State must live up to the Constitution only because it gets more out of the Union than it puts in, then every State which pays more taxes than the Federal benefits which it receives must be ripe for secession.

And in passing there, Mr. Chairman, they pointed out that my State received more, so said, of the Federal Treasury than it paid in. According to that standard and according to the figures a few years ago—I don't have them for up-to-date, but just a very few years ago—every State west of the Mississippi River would come in that same category. That is a rather revealing fact of life but that was true a few years ago and I think perhaps still is.

The condemnation and ridicule which greeted the Commission's recommendation was so complete and unanimous that even the Commission itself has now felt compelled to renounce and disavow it. Even though the recommendation was spelled out in clearly written English language the staff director and a prominent member of the Commission plead in their appearance before this subcommittee that they really didn't mean what they said and that—

Senator ERVIN. Isn't it rather a tragic situation when you have a Commission composed of six highly educated men, prominent educators, who have to come before this committee and say that we didn't say what we meant to say in our recommendation?

Senator STENNIS. Well, it is just—it is almost unbelievable and would be unbelievable except that it has happened.

Senator ERVIN. They would have to admit that their recommendation has been misconstrued by such erudite people as the President of the United States and by such an unlettered person as the Senator from North Carolina.

Senator STENNIS. Well, you have mighty good company.

They actually came before this committee, Mr. Chairman, and said that they really didn't mean what they said, and the Commission was misquoted and widely misconstrued. This strategic retreat is not overly convincing, particularly in the light of the President's prompt and appropriate reaction to the recommendation. The President repudiated it in these words, which I think ought to be quoted, and I quote:

I don't have the power to cut off the aid in a general way as was proposed by the Civil Rights Commission, and I would think it would probably be unwise to give the President of the United States that kind of power because it could start in one State and for one reason or another it might be moved to another State which was not measuring up as the President would like to see it measure up in one way or another.

A very strong statement and a very true one.

The distorted thinking of the Commission can best be illustrated by its unsupported and false statement that—

even children, at the brink of starvation, have been deprived of assistance by the callous and discriminatory acts of Mississippi officials administering Federal funds.

The Commission apparently would right this alleged wrong by taking action to withhold from the needy people of the State of all races welfare funds such as old-age assistance, aid to the blind, child welfare funds, Federal lunchroom funds, and the other funds which are so necessary to the continued welfare of the indigent.

The latest available figures compiled by the Mississippi Department of Public Welfare discloses that 20,304 families receive welfare assistance for 62,839 children under the aid to dependent children program. Of this group, and I emphasize "of this group," 77.7 percent of these families were Negro, with 50,770 children. Of the funds involved, on a dollar basis, 79.07 percent of the total amount went to Negro children.

Senator ERVIN. May I interrupt you at that point?

Senator STENNIS. Certainly.

Senator ERVIN. I was struck by this very drastic statement in the recommendation of the Commission:

Even children at the brink of starvation have been deprived of assistance by the callous and discriminatory acts of Mississippi officials administering Federal funds.

After making that statement the Civil Rights Commission made a recommendation, did it not, among other things, that all funds furnished by the Federal Government for the support of 50,770 Negro children and 11,842 white children be cut off.

Senator STENNIS. That, Senator, is correct. That is the point involved, reckless disregard for facts and contradiction on its face.

Senator ERVIN. And does not the Senator agree with me in the observation that if there had been any basis for the charge of the Commission about callous action of the Mississippi officials, the Commission forthwith made a statement which has been interpreted to mean that the Commission was prepared and anxious to see that the Federal Government followed what the Commission considered to be the evil example of Mississippi officials?

Senator STENNIS. Except in that case, Mr. Chairman, the alleged charges against these Mississippi officials were not true and in the

case of the Commission it is true because it is put in black and white over their own signature.

Senator ERVIN. Not only put in black and white but issued in a statement to the press so the whole press could carry this charge against Mississippi.

Senator STENNIS. Yes. The further facts are, Mr. Chairman, the Civil Rights Commission somehow failed to discover that of all welfare payments made in Mississippi, including now the Federal money and the State money, under the various programs, 61 percent of all these funds went to Negroes. Yet these are the people the Civil Rights Commission says will be helped if Federal funds are cut off from the State. These are the people for whom the Commission professes to have such great solicitude.

Now, in addition to the enormity of the offense that I think they committed in this recommendation, how much credence can you give to the other recommendations?

Senator ERVIN. I don't know whether the Senator has the figures, but the figures which I obtained indicate that in cutting off Federal grants for old-age assistance to Mississippi, 44,935 white people and 70,440 Negroes would be affected.

Senator STENNIS. Those are approximately the same figures I have. I have figures here that are taken from the Department of Welfare.

Senator ERVIN. Before we leave this point, I would like to ask you if the proposal made by the Commission as interpreted by the Senator from Mississippi and many others would not have involved cutting off funds for the colleges and agricultural and mechanical arts, grants for library services, vocational education, payments to school districts and impacted Federal areas, grants for assistance for school construction, grants for vocational rehabilitation services, grants for defense, education activities, and also grants for the education of mentally retarded?

Senator STENNIS. Yes. The Senator is correct in those figures and the list of groups affected, and I had already referred in my statement to some of them, including those that are mentally retarded.

Senator ERVIN. Is the Senator conscious of the fact that among the Federal grants being given to Mississippi, as well as all the other States in the Union, there are grants for tuberculosis control, grants for promotion of general health, grants for the benefit of the chronically ill and aged, grants for mental health control, grants for heart disease control, grants for cancer control, grants for radiological health, grants for the elimination of water pollution, grants for the construction of waste treatment works and grants for hospitals and medical facilities construction?

Senator STENNIS. That is the list of items that are involved in their sweeping recommendations.

Senator ERVIN. And I will ask the Senator if he is also aware of the fact that among the Federal grants which would be cut off if the recommendation of the Commission as interpreted by himself and myself were carried out, would be grants not only for old-age assistance but to families with dependent children, to the blind, to the permanently and totally disabled, for maternal and child welfare services, for crippled children and child welfare services, and also grants for making Braille books available to the blind?

Senator STENNIS. Yes. That is correct. That is the bill of particulars.

Senator ERVIN. Does the Senator not think that it would be a terrible thing for the Federal Government to cut off grants for the benefits of so many helpless people in order to coerce the officials of the State to conform to the notions about many of our social problems of those people on the Washington level?

Senator STENNIS. Well, it is not only absurd on its face but it is an unmerciful coercion without regard to human beings.

Senator ERVIN. And is not the proposal to cut off Federal grants to persons of this character until the States conform to Washington's viewpoint in effect a proposal that those States be robbed by coercive methods of the power of local self-government?

Senator STENNIS. Well, it is that and in addition, too, it is a violation of congressional enactments and laws the Congress passed and the President signed. It is a violation of every basic principle of humanity as well as sound political government.

Senator ERVIN. And do not such recommendations from a Federal Commission vindicate the wisdom of the Founding Fathers in establishing local self-government in our constitutional system?

Senator STENNIS. Yes, sir. That is another illustration of it, and the President himself in his statement here makes comment on the power to withhold funds, that it might spread from State to State or one President would have a different formula from another and give different reasons.

Senator ERVIN. Is it not another vindication of the statement of Woodrow Wilson to the effect that liberty has never come from government, that it has always come from the subjects of government, and the history of liberty is the history of the resistance to undue governmental power?

Senator STENNIS. Restrictions on, yes.

Well, it illustrates the wisdom of our system, but even more than that, it illustrates here men, honorable men, getting obsessed and running beyond their powers and beyond the constitutional principles of our Government and to carry on blinded in their innocence to the harm that they bring to others as the facts and figures here illustrate.

And the chairman has quoted these figures and I think it is pertinent again to point out by conclusion that of all these welfare payments that have been enumerated in all the various programs, over 61 percent of them went to the colored people of the State which were the subjects of their recommendations.

Now, these recommendations of the Commission would be laughable if they did not come from an agency of the Government which is charged with the duty of giving fair treatment to all of the citizens affected by its operations, not just to a special and privileged minority group.

Even as the Commission charged there were denials of constitutional rights in Mississippi, it called for steps—the withholding of Federal funds from Mississippi—which would clearly, patently and manifestly grossly violate the same Constitution.

The various Federal programs operating in Mississippi are administered under carefully detailed congressional enactments. None of them contains the authority to withhold funds from any State for the reason urged by the Commission. The Congress has repeatedly re-

jected this principle and has defeated many attempts to prohibit the expenditure of Federal funds in those States where so-called discrimination is alleged to exist.

The Powell amendment has been repeatedly defeated both in committees and on the floor of both Houses of Congress.

Obviously the President can neither enlarge nor diminish the authority conferred upon him by the Congress with respect to these programs, and I am relieved greatly that he rejected out of hand the suggestion that he was vested with any such power.

The Commission's proposal is also unconstitutional on its face. There is just no provision in either the Constitution or the statutes for any kind or type of punitive action against an entire State for alleged violations of law by some individuals.

Mr. Chairman, the rest of page 7 there, if I may ask unanimous consent that that be included in my statement without reading it here, is that agreeable?

Senator ERVIN. Yes.

Senator STENNIS. I have a statement beginning on page 8, the first two paragraphs, that I want to include but I don't think it is necessary to read it now, if I may ask consent that those two paragraphs will be included.

Senator ERVIN. Yes. We will include it in the record.

Senator STENNIS. It is not denied that the Commission does actually solicit complaints and it cannot be denied that the complaints are received and considered in a manner which does not insure their accuracy, reliability, and trustworthiness.

This paragraph relates to the formal statements about handling of complaints by the Commission. The evidence—if I may dignify it by that term—on which the Commission bases its findings and its ridiculous recommendations is accumulated, not under the protective shield of tried and proven judicial procedures, but in an ex parte manner by committees composed at least partially of lay citizens.

The witnesses are not under oath and are not subject to cross-examination. The Commission does not even afford the fundamental constitutional right of an accused to be confronted with his accuser. In fact, the Commission, with no judicial safeguards whatsoever, has attempted to accuse, indict, convict, and punish an entire sovereign State on unproven and often irrelevant allegations.

Is the Congress to make this type of agency permanent? Are we to enact legislation in the future based on such investigations as have been made by the Commission?

I submit that normal legislative processes should not be subverted in this manner and that the action of the Congress should follow instead the proven deliberative process of committee study, investigation, and recommendation.

I submit also that the executive branch of the Government should exercise its function of enforcing laws in accordance with our well-established traditions and precedents when a justifiable issue is properly presented to a duly constituted court or when there has been a judicial determination that a law has been violated.

Mr. Chairman, if I may allude to the chairman's experience on the bench, where he served not only with distinction but a great number of experiences, I am sure the Chair is impressed here by just the results that flow from collecting evidence, so said, and complaints,

so called, and putting them into a formal report and issuing them out to the press, and thus disseminating them throughout the Nation.

Now, can we entrust permanence or more power to a group that goes about—that approaches their business and their functions in such a spirit?

Let me give some examples of the meddlesome, unrealistic, and entirely useless activities of the Commission. Both private citizens and public officials in Mississippi have furnished me with copies of some of the questionnaires sent out by the Commission.

I am sure there are many others. One questionnaire was received by a prominent attorney in Mississippi with a covering letter dated November 1, 1962, which announced that the Commission was, of all things, conducting a survey of lawyers. Included in this questionnaire were such noncivil rights questions as the age of the recipient, whether he was engaged in the practice of law, whether he was a college graduate, how long he had practiced, whether he was a member of the American Bar Association and the State bar association, et cetera.

The pertinency of many of the questions to the field of civil rights is not readily apparent and there is sound reason to suspect that this was a make-work project to justify the existence of the Commission and the employment of some of its staff.

In replying to the questionnaire the distinguished attorney to whom I have referred wrote the Commission and said:

I have been practicing law nearly 50 years and am thoroughly familiar with the situation in the South relative to race relations, and there is more good will between the races in the South than you will find anywhere else in the world and which is being badly disturbed by your Commission, the NAACP, and such other groups that are doing more harm than good. In fact, such activities have set the advancement of the Negroes in the South back for 100 years.

Mr. Chairman, I want to make a reference now to some of these funds that the chairman mentioned awhile ago, and if I may make partly a personal reference thereto, as a young boy and as a young man I worked in a drugstore in a small town and saw the people coming there from all walks of life wanting medicine, buying medicine, and to see the doctors.

There wasn't any hospital in that town then. Now there is a complete modern, up-to-date Hill-Burton hospital that serves the county wide. I remember when there were some 30 doctors in the county and now there are only 4 or 5, but still through the facilities of the hospital and the instruments and the fixtures, everything that goes with it, to operating rooms, more people are served and they come there from all areas of the county, the white people, the colored, the same doctors serve them all, the same operating rooms, and they come there, and babies are born there, a great many of them.

I have visited in that little hospital. I think it is one of the finest illustrations of a proper kind of Federal-State-community effort all combined together, everyone being served, and everyone happy and in fact delighted with the results, and I go there and visit among various patients from time to time regardless of color.

That little town is where I have lived all my life.

Now, that is the kind of program that this Commission, because of some other grievance, would cut off funds from Hill-Burton construction programs as the chairman mentioned awhile ago.

Now, the striking thing to me is that of all the propaganda and everything that is put out by people that know nothing about those conditions, have not lived with them, had no personal contact with them, know nothing about it, know nothing about the affinities of the races and the people and the economic situation and the day-to-day problems as well as the pleasures and benefits that go with life, where the races live together that way, they know nothing and have no personal concept of those things.

They are the ones that make recommendations, sweep all this aside, tear down those relations, cut asunder, cut the cord that binds the races together by indescribable affinity there and liaison, if we want to use a more modern term, cut all that because it doesn't comply with some person who knows nothing of the facts or their concept of what may be certain rights under the Constitution, throw overboard everything that has been built up over decades, even centuries, that has contributed to the welfare of both and to all, throw that all overboard and try to substitute in its place some preconceived concept like a mathematical formula.

It won't work, never has worked. It won't work now. And after all the wreckage that we are creating here by these conditions that are going on in this country now and all that has been accumulated, it is going to have to be raked aside and we will have to go back to the basic principles which I have described in the beginning here for these proper racial relations.

But these Federal programs working together with the State and with the local community in that little hospital that is partly paid for by the county, by the town, and in some years they had to contribute to keep it going properly, these are fine illustrations of progress that is made day to day, week to week, and year to year for the benefit of all.

Now, it is strange to me that on the national level the testimony of those that know something about this, because they are part of it, is rejected while the theorist and the perfectionist, his testimony is accepted and they try to write it into law.

Mr. Chairman, I have another illustration here of a quotation. I ask that it be inserted in the—

Senator ERVIN. The entire statement will be inserted in the record.

Senator STENNIS. Thanks.

It is almost impossible for me to believe that there is any basis for contending that the Commission's record is such as to inspire any confidence in it as a trustworthy, impartial, and judicious agency of the Government. Certainly its record does not inspire that confidence which would justify a broadening and expansion of its power and authority.

I repeat these references are not to the members as individuals because they are worthy citizens, of course, but I refer to the record here and its deficiencies.

Yet, there is a new section in both bills now before the subcommittee which provides that the Commission shall:

Serve as a clearing house for information and provide advice and technical assistance to Government agencies, communities, industries, organizations and individuals, in respect to equal protection of the laws, including but not limited to the fields of voting, education, employment, the use of public facilities, transportation—

and here is the crown of all—
and the administration of justice.

Senator ERVIN. I have some questions on that point I want to ask the Senator later.

Senator STENNIS. Well, that ends the quotation here upon that particular requested power.

On its very face the power and authority here sought is so broad and sweeping as to infringe upon the established jurisdiction of other agencies. The Commission would be authorized in civil rights cases to "provide advice and technical assistance" to all and sundry including Government agencies.

I theorize that this means that it would have a staff of lawyers to provide advice and assistance to the Department of Justice which already has its own civil rights division financed at the expense of the taxpayers.

If they weren't going to have the lawyers to advise the Department of Justice, I don't know who else they could have. The Commission would be empowered to interfere in the "administration of justice" which I had thought was historically reserved for the courts.

The provision in both S. 1117 and 1219 which would endow the Commission with broad rulemaking power constitutes another grab for authority by this agency. Every student of the Constitution and administrative law knows that any rulemaking power should be exercised most carefully within the framework of the basic legislation.

Properly exercised it is the medium for the fulfillment of the congressional design. Improperly exercised, it is a tool and a method for the assumption of unwarranted power. I think that the recent recommendations of the Commission show that it has prejudged every important issue which might be presented to it in the future and that the members can be expected to have little or no respect for the prescribed limits of their authority. Certainly it would be perilous for the Congress to enlarge their power.

While I am not advised, Mr. Chairman, of the number of personnel employed by the Commission, I am sure that the subcommittee will inquire closely into this question.

In conclusion, Mr. Chairman, let me say that the entire record of the Commission leaves little doubt but that its members are imbued with preconceived opinions, judgments, philosophies and motivations which render them utterly incapable of that fair, impartial, unbiased and judicial approach which is so necessary to reasonable and harmonious relations between the races and to a peaceful solution of existing problems.

Since the Commission members fail or refuse to recognize the basic truth that there are two sides to every question, I think that the possibility of the Commission making any contribution to the improvement of racial relations is now foreclosed. It simply fails to recognize—as all fairminded persons must—that all too often spurious and baseless allegations, although apparently credible when made, fade and become discredited when the other side is afforded an opportunity to state its case.

I say again, Mr. Chairman, that the Congress will be performing an act of both mercy and sound judgment if we now let this useless appendage to the body politic die the peaceful death which the Congress originally ordained for it 6 years ago.

Instead of extending the life of this Commission and thereby licensing it to continue and expand its agitational activities which succeed only in stirring racial strife and discord, we would do a far greater service for the Nation if we devoted our energy to the restoration of peaceful and harmonious relations between the races.

The Government should abandon its support of those who are so eager to sow racial bitterness and discontent for their own selfish ends. Let us return to the concept of rule by the established and orderly processes of law. Let us restore the problem on race relations to its proper place in the legal scheme of things and let men of good will work together for a proper and peaceful solution in accordance with established legal procedures and remedies without being hampered by the extremist activities of a group of political busybodies.

Gentlemen, that concludes my statement. I thank you.

Senator ERVIN. I would like to ask the Senator some questions.

Does not the Senator think that the recommendation of the Civil Rights Commission as interpreted by the President, much of the American press, the Senator from Mississippi and myself, that Federal grants to Mississippi be cut off for the present, amounts to a recommendation that the President usurp and exercise authorities that belong to Congress alone?

Senator STENNIS. Oh, yes. Clearly so. Clearly so. Whatever power is in that field, it is solely congressional power and I doubt that the Congress could impose such arbitrary restrictions.

Senator ERVIN. And do not the acts of Congress providing for these various grants specify the terms and conditions upon which the grants are to be made?

Senator STENNIS. The formulas are written into the bill as the Chair knows.

Senator ERVIN. And if the President were to annex other conditions, he would be amending an act of Congress when as a matter of fact he has no legislative power whatever under the Constitution.

Senator STENNIS. The Senator is correct. If he was willfully trying to commit an act like that, it would be unlawful and that would be grounds for impeachment.

Senator ERVIN. Does the Senator know of any power in the Constitution which vests in the President the power to condemn a State or an individual?

Senator STENNIS. Well, the President has no such power.

Senator ERVIN. Is not that a judicial power?

Senator STENNIS. Oh, yes, the power to impose penalties, yes. It is purely a judicial power.

Senator ERVIN. Does not the due-process clause of the fifth amendment prohibit any agency or any Federal court from condemning anybody, any institution or any agency of a State government without first serving notice and affording an opportunity to be heard in their own behalf?

Senator STENNIS. Well, that is fundamental and essential. It is really included in the term "due process of law," but in that case it is spelled out as the Chair has said.

Senator ERVIN. And does not the Senator think that the recommendations made by the Civil Rights Commission as interpreted by him and myself and many others show a woeful lack of appreciation of the fundamental concepts embodied in the due-process clause?

Senator STENNIS. Unquestionably it is in almost every half page of their recommendations. I cannot understand how it could happen in such flagrant disregard of the basic principles of the law.

Senator ERVIN. First I want to say in fairness to two of the Commissioners, Vice Chairman Storey and Dr. Robert Rankin, that they have dissented, on many occasions, from the advice which the Commission tendered to the Congress.

Now, I want to call the Senator's attention to the recommendation of the Civil Rights Commission made in 1961 in book 1 entitled "Voting," at page 139.

Recommendation No. 1.

I will leave out some things that are not material to my questions.

That Congress—

acting under section 2 of the 15th amendment and sections 2 and 5 of the 14th amendment—

enact legislation providing that all citizens of the United States shall have a right to vote in Federal or State elections which shall not be denied or in any way abridged or interfered with by the United States or by any State for any cause except for inability to meet reasonable age or length-of-residence requirements uniformly applied to all persons within a State, legal confinement at the time of registration or election, or conviction of a felony.

Now, that recommendation was to be implemented by an act of Congress, and Vice Chairman Storey and Commissioner Rankin dissented on this ground, among others:

Many States have voting requirements more extensive than age or length of residence, incarceration, or felony convictions. These qualifications, having nothing to do with race, religion, or national origin, are an important element in preserving the sanctity of the ballot. They are specific disqualifications which are felt justifiable for the good of the State. Disqualifications of persons whose mental condition makes it impossible for them competently to exercise the discrimination necessary in voting has long been accepted. Many States disqualify paupers supported by municipal or county officials on the theory that these people are too easily exploitable by such officials for their own purposes. The security and purity of the ballot can be destroyed by permitting illiterates to vote. And as the English language is still the official language of the United States, there is good justification for States requiring that voters have at least a rudimentary knowledge of this language.

I will ask the Senator from Mississippi whether or not he agrees with Vice Chairman Storey's and Commissioner Rankin's dissent.

Senator STENNIS. It is so true and so correct and clearly points out by members of the Commission the fallacy of the reasoning of the majority.

Senator ERVIN. Is there anything in the 14th amendment or 15th amendment which would vest in the Congress power to deprive the States of the right and the power to say that insane persons, idiots, paupers, and illiterates shall not vote?

Senator STENNIS. To the contrary, it is clear that there is no such power and it has so been recognized by the Congress and the people of the United States.

Senator ERVIN. I would like to ask the Senator if the 2d section of the 14th amendment does not expressly recognize that States have a right to deny the franchise on grounds satisfactory to the States and not prohibited by the Constitution and that the only penalty to be visited upon the States for so doing is to have their representation in Congress reduced?

Senator STENNIS. Correct. The Senator is——

Senator ERVIN. And I will ask the Senator if the only matters in respect to which Congress is authorized to legislate, under the fifth amendment, is prohibition of the denial or abridgement of the right to vote solely on the basis of race, color, or previous condition of servitude.

Senator STENNIS. That is correct, and it came through a constitutional amendment then.

Senator ERVIN. Does not the Senator agree with the chairman in the conviction that if Congress, following the recommendation of the Civil Rights Commission, were to pass such a statute, it would be totally unconstitutional because Congress has no power to deny the States the power to disenfranchise insane persons, idiots, paupers, or illiterates?

Senator STENNIS. That is true, by an unbroken line of precedents, always recognized by the Congress, and a bill partly along the lines that the Commission recommends was defeated last year.

Senator ERVIN. And I would like to ask the Senator if the Commission itself didn't recognize the validity of the Senator's position in their previous recommendation that such action as this be taken by a 23d constitutional amendment rather than by statute?

Senator STENNIS. I don't personally recall, but I am sure the Chair——

Senator ERVIN. I refer to the recommendation which states quite clearly that the Constitution should be amended to give every person of requisite age and who has met residence requirements an absolute right to vote in any election held anywhere in the 50 States for any purpose.

Senator STENNIS. That correct statement——

Senator ERVIN. These are recommendations.

I would want to call the attention of the Senator to another recommendation, No. 2, on this voting proposition, found in the same book, on which the Senate spent several weeks of last session.

Recommendation No. 2: That Congress enact legislation providing that in all elections in which under State law a literacy test and understanding or interpretation test or any educational test is administered to determine the qualifications for electors, it shall be sufficient for qualification, that the elector have completed at least six grades of formal education.

Now, before I ask the Senator a question, I want to call his attention to section 2 of article 1 of the Constitution which says:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

I also want to call the Senator's attention to this provision of section 1 of article 2:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.

I want to call the Senator's attention in addition to the 17th amendment to the Constitution.

SECTION 1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years and each Senator

shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.

I will ask the Senator if the Supreme Court of the United States hasn't held consistently that under those provisions of the Constitution, the State and not the Federal Government has the right to prescribe the qualifications for voters.

Senator STENNIS. It is clear. Just as clear as can be. And it has always been so held.

Senator ERVIN. I will ask the Senator if that was not held by the Supreme Court in the case of *Williams v. Mississippi*, reported in 170 U.S. Supreme Court at page 225, and also in *Guinn v. United States*, reported at 238 U.S. 347, and in *Lassiter v. Northampton County Board of Elections*, reported in 360 U.S. 45.

Senator STENNIS. Those are the precedents.

Senator ERVIN. I will ask the Senator in his judgment as a lawyer if that second recommendation of the Commission on Civil Rights which I have just read is not a recommendation that Congress usurp and exercise power which it does not possess and undertake to deprive the States of power which the States do possess under the Constitution.

Senator STENNIS. Well, that is what it does and it is the purpose; couldn't be any other purpose. It is an amazing thing to me in view of the precedents that the Senator has cited of the courts, the action of the people in adopting constitutional amendments, the action of the Congress in proposing constitutional amendments, and also the Congress in rejecting bills that would carry out such a measure as being unconstitutional, it is just beyond conception to me that this Commission would make such a recommendation.

Senator ERVIN. And can the Senator understand how such eminent lawyers as are several of the members of this Commission could concur in such a recommendation?

Senator STENNIS. I cannot understand it and I say I know they are patriotic citizens. I think it must be some kind of obsession. Sometimes we call it bureaucratic zeal and I don't know how to understand it, but it is so clear and unmistakably erroneous that I wouldn't want to entrust them with continuation of any power.

Senator ERVIN. Certainly the constitutional provisions which prohibit a State from denying anyone the right to vote on account of race, creed, color or previous condition of servitude would not deny the States the right to prescribe any other qualifications for voters.

Senator STENNIS. Certainly not, and the amendments themselves carry the provision forward in its own language that continues the power of the States to prescribe the qualifications. That is the original language in the Constitution and it is carried forward word for word in each amendment.

Senator ERVIN. Now, the Senator called attention a moment ago to the recommendation that the Civil Rights Commission have its life extended and also that it be given authority to give advice to others in addition to Congress.

Senator STENNIS. Yes.

Senator ERVIN. I want to ask the Senator a question or two in reference to administration of justice.

I call the attention of the Senator to the recommendation made by the Commission in its 1961 report, book 5, entitled "Justice," on pages 112 to 113.

Now, the Commission recommended that Congress consider the advisability of enacting a companion provision to section 242 of the United States Criminal Code which would make the penalties of that statute applicable to those who maliciously perform, under color of law, certain described acts including the following: subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody.

Now, we presently have a statute, do we not, section 242, which makes any State law-enforcement officer, who uses force upon any person that he is arresting or detaining on a State charge for the purpose of depriving him of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, subject to fine and/or imprisonment.

Senator STENNIS. I remember that section.

Senator ERVIN. Now, doesn't this recommendation go far beyond that?

Senator STENNIS. Well, as I understand the reading of it by the chairman, yes.

Senator ERVIN. Now, in the old statute an officer could not be convicted unless he used unnecessary force and violence.

Senator STENNIS. Yes.

Senator ERVIN. In effecting an arrest or detention.

Senator STENNIS. Beyond the call of duty.

Senator ERVIN. For the purpose of denying the man his rights secured to him by the Constitution or the laws of the United States.

Now, this recommendation if enacted into law would make every State officer who uses force to effect an arrest or retain a person in custody subject to indictment in the Federal court upon the charge that he had used more force than was actually necessary in the excitement of the moment. Isn't that right?

Senator STENNIS. That is correct. That is the way I understand it.

Senator ERVIN. Now, I will ask the Senator, if Congress were so foolish as to enact this recommendation into law, would it not put each State law-enforcement officer; that is, every sheriff, every deputy sheriff, every policeman and every constable in the United States, in this kind of a dilemma: if he failed to use the force necessary to effect an arrest or prevent an escape when he encountered forceful resistance from the alleged criminal, then the alleged criminal would probably escape or assault the officer, even perhaps murder him in an extreme case. Wouldn't this be a possibility if he underestimated the degree of force necessary to perform his duty?

Senator STENNIS. That is right, and also the officer would be guilty of the crime of neglect of official duties.

Senator ERVIN. That is right. He would be subject under State law to misfeasance in office and to failure to perform his sworn duty.

Now, on the other hand, if he overestimated to any degree the amount of force necessary to enable him to perform his duty, to arrest the alleged criminal or to retain the alleged criminal in detention, then he would be subject to being indicted and prosecuted in the district Federal court by a Federal Government which was allied with the criminal instead of the law-enforcement authorities of the State, wouldn't he?

Senator STENNIS. He certainly would, and not only apply in cases that occurred but it would so hold the officers under such coercion and intimidation that they couldn't be effective.

Senator ERVIN. And does not the Senator agree with me that this recommendation does not apply to any officer arresting people for violation of the Federal law but applies only to State law enforcement officers undertaking to arrest or detain a person upon a charge of violating a State law within the borders of the State in which he functions?

Senator STENNIS. Well, the chairman has shown how very ridiculous the recommendation is, how impractical it is.

Senator ERVIN. Can the Senator as a practical matter conceive of any statute which would make it more difficult for States to enforce their own laws within their own borders against their own citizens than this?

Senator STENNIS. Well, it would put them out of business, and that is one of their very first duties, too, enforcement of their own law.

Senator ERVIN. And I will ask furthermore if the Senator can think of any action that could be taken by the Congress that would do greater injury to good Federal-State relations.

Senator STENNIS. That is a very practical aspect of it. It would virtually destroy any possible basis for a proper relationship. The Senator is correct.

Senator ERVIN. Does not the Senator agree with me in the suspicion that the members of the Commission who made this recommendation have become so solicitous about the rights of persons charged with crime that they have forgotten that the primary object of the criminal law is to protect society against those who murder, rape, rob and commit other crimes?

Senator STENNIS. Well, that is correct. It gets back to the idea of an obsession on one or two subjects and runs by the red lights and the constitutional highway signs in the entire structure.

Senator ERVIN. In other words, when an organization or individual becomes a crusader, he is easily blinded to some of the realities of life, is he not?

Senator STENNIS. Yes, sir, and I tell you frankly, I don't have the privilege of knowing these gentlemen but I can't help but believe that a great many of those recommendations there originated with someone else, were written by someone else and only in the rush of their affairs they did not give them the usual circumspect attention. Other wise they would see the flaws, some at least of the flaws that the chairman has pointed out.

Senator ERVIN. Well, I am not reflecting on the zeal or the patriotism of the members of this Commission. I am only reflecting upon their good judgment.

Senator STENNIS. Their conclusions.

Senator ERVIN. And I think that had they had any concern with the practical administration of law, they would never have made this recommendation.

Senator STENNIS. That is one of the things that I was thinking while the chairman was enumerating those matters, that such statutes, on such subjects, should originate in the minds and work of the people who have had some experience, some contact with the problem.

Senator ERVIN. And these men are fine men. It is difficult when men of this kind who serve on a per diem basis only are necessarily compelled to adopt a recommendation or recommendations of members of the staff of the Civil Rights Commission who may themselves

have had no practical experience in respect to the matters with which they are dealing.

Now, I want to ask the Senator another question concerning this.

Recommendation 3 on page 112 of the same book on "Justice," book 5.

Recommendation 3, that Congress consider the advisability of amending section 1983 of title 42 of the United States Code to make any county government, city government, or other local governmental entity that employs officers who deprive persons of rights protected by that section, jointly liable with the officers to victims of such officers' misconduct.

This deals with situations wherein the officers engage in acts that exceed their authority.

Senator STENNIS. Yes.

Senator ERVIN. I would like to ask the Senator if Blackstone does not tell us in his Commentaries on the Law of England, that in the early days of the common law there was a principle that if a person was going through a certain territory and sustained a wrongful injury at the hands of an individual, everybody in the community was held liable for the consequences.

Senator STENNIS. I remember that provision.

Senator ERVIN. I have a vivid recollection that Blackstone stated in his Commentaries that this law fell into disuse and was abandoned when the English-speaking race acquired a sufficient degree of intelligence and civilization to realize that it was unfair and unjust to visit the sins of the guilty upon the innocent.

Senator STENNIS. Yes, the individual responsibility idea.

Senator ERVIN. And does not the Commission's recommendation contemplate that we shall revive a principle of law which was outmoded centuries ago and visit upon all the innocent taxpayers of the community the transgressions of individual law enforcement officers?

Senator STENNIS. That would clearly be its purpose. As I recall, there were measures at that time during the unfortunate reconstruction days—I don't recall to what extent they were ever enforced but those provisions were written into some unfortunate congressional acts which I think were later repealed.

Senator ERVIN. Does not the Senator feel that sins of the guilty ought to be visited upon the guilty alone?

Senator STENNIS. That is one of the basic concepts of our form of government and our ideas of justice and right.

Senator ERVIN. But does the Senator think that if this is going to be adopted as a principle of law that we ought also to amend the statutes, to hold the Federal taxpayers responsible for the inequities of the Federal officers?

Senator STENNIS. Of course, to balance it off that would be necessary.

Senator ERVIN. What is sauce for the State gander certainly ought to be sauce for the Federal goose.

Senator STENNIS. Federal goose, yes. Well said. But we don't need any law of that kind anyway.

Senator ERVIN. I would like to ask the Senator just one or two other questions. The Commission has made recommendations about the District of Columbia to the effect that the Federal Government be given the power to supervise transactions in real estate and to deny an owner of more than a two-family apartment or home the right to

select the person he rents to, and the right of a real estate broker to carry out instructions of the owner of the property with reference to any preference he might have that the sale be made to a person of a particular race.

Does not the Senator think that the right to use and dispose of property as the property owner sees fit constitutes one of the most precious rights which Americans in the District of Columbia have thus far enjoyed?

Senator STENNIS. Well, it is one of the most fundamental rights and if that is to be destroyed, then by the same token, by the same process, any other right could be taken away. I don't know of one more fundamental than that.

Senator ERVIN. Does not the Senator think that a man would be reduced to economic bondage if the Federal Government undertakes to tell him what he can do with respect to use and sale of his own property?

Senator STENNIS. I think, Senator, that it is a part of the general prevalent attempt to downgrade everything and everybody on the false concept of so-called equality. I think the generation we came up in, the idea was everybody tried to improve their position and elevate and pull up by your own bootstraps, or some other way, and I think the trend now is to downgrade everything and level it off.

Senator ERVIN. In other words, America became great because America gave her people a liberty; did it not?

Senator STENNIS. Yes.

Senator ERVIN. It gave them a liberty to acquire, use, and sell property and it gave them a liberty to manage their own affairs.

Senator STENNIS. Liberty and responsibilities personally.

Senator ERVIN. Do not these recommendations show that some people value what they call equality far more than they do liberty?

Senator STENNIS. Well, undoubtedly, as I say, that is the trend with a great many, to downgrade and pull everything down to a common level and make it even, equal, and it is destroying the basic—not only the basic rights but the basic—the mainspring of our strength, I think, in our Government, that is, the individual responsibility, and then individual rights as the chairman pointed out.

Senator ERVIN. Now, there is another recommendation I will not undertake to read but which recommends that either the Congress or the President by Executive order—they apparently accept the theory that the President has the power to legislate by Executive order—subject any lending institution to supervision by a Federal agency in respect to any loans they might make on mortgages for the acquisition of homes.

In other words, this is a recommendation that the Federal Government undertake to supervise the exercise by lending institutions of the right to make loans of their own money or the moneys in their deposit.

Does not the Senator think that that is an intolerable interference with the rights of people to make loans of their own money as they see fit?

Senator STENNIS. Well, to an extent it is a confiscation of property because it takes away from the owner certain privileges that he has to use that property as a means to the end to which he can put it, and I think before we leave that subject, I have about concluded that the most serious threat of all with reference to all this, the use of this power in

new ways, to leveling off and everything else, is the use of the economic power of the Federal Government. You take the spending of around \$100 billion per year every year. There is a power that goes with that that never has been equaled in world affairs before. No nation has ever had such power, and the use of it through the various mediums that the chairman has already mentioned, the agencies of the Federal Government in holding or withholding funds, recommendations of this Commission as an illustration, and then further the Senator has pointed out now the proposal that any lending agency that has any financial dealings with the Federal Government, that they will be subject to that control, too, and that is the most devastating, the economic power is the most devastating power of all, I think.

Senator ERVIN. And in that connection I was very much concerned about a statement in the recommendations concerning cutting off funds to Mississippi in which the Commission seemed to be more concerned about these matters than they were about the effort in the United States to keep ahead of the Russians in the space race.

Senator STENNIS. About what?

Senator ERVIN. Our efforts to keep ahead of the Russians in the space race. Actually they deplored that NASA was contemplating building a moon rocket plant in Mississippi. They thought even a trip to the moon ought to be subordinated to the accomplishments of this so-called civil rights program.

Senator STENNIS. Yes. That is more than just a trip to the moon involved there. What is involved I think is the mastery of space in which we cannot be second place. It has a military significance.

Senator ERVIN. Survival of the Nation in the perilous age in which we find ourselves, made secondary to the implementation of their ideas as how society should operate.

Senator STENNIS. That was their recommendation. I don't see how they could have deliberated over that one very long without someone pointing out how far afield it would go.

Senator ERVIN. Senator, in 1883 the Supreme Court of the United States struck down laws as invalid, which were similar to what the press says the President is about to recommend to Congress with reference to so-called public accommodations. The Supreme Court said in the *Civil Rights* case that this was not State action, but action of individuals. This is in view of the so-called civil rights proposals of modern vintage.

Senator STENNIS. What case was that, Senator?

Senator ERVIN. The *Civil Rights* cases.

Senator STENNIS. Yes. New Orleans.

Senator ERVIN. Here is what the Court says:

When a man has emerged from slavery and by the aid of beneficent legislation has shaken off the intemperate concomitants of that State, there must be some stage in the progress of his elevation when he takes the ranks of a citizen and ceases to be the special favored of the laws and when his rights as a citizen as a man are to be protected in the ordinary mode by which other men's rights are protected.

I will ask the Senator if he agrees with me that all of these proposals which have been made by the Civil Rights Commission to which I have called his attention, are proposals in which certain persons or certain Americans or certain groups of Americans are selected from other Americans solely upon the basis of their race and are made spe-

cial favors of the laws and are excused from having their rights adjudicated by the laws by which the rights of all other Americans are adjudicated, in violation of that admonition of the Supreme Court in the *Civil Rights* cases.

Senator STENNIS. Well, that is the trend unmistakably.

Senator ERVIN. And isn't it a great tragedy when the proponents of a program come before the Congress and say that their program cannot be carried out unless they take precious rights away from all Americans and give special rights to other Americans, never asked by or granted to any other Americans in the history of our country.

Senator STENNIS. Right. Well, that is what it is equal to now.

Senator ERVIN. In other words, I do not believe that the American dream of liberty has to be converted into a nightmare, and that is what to my mind these recommendations that all Americans be robbed of basic rights and that the Government undertake to control their economic affairs, their political affairs, and their personal affairs, come to.

Senator STENNIS. It will mean a complete change in the concept and operation of our form of government. A complete transition without having changed a letter in the Constitution.

Senator ERVIN. I would like to ask the Senator if he does not agree with me in the proposition that there are now upon the statute books of the Federal Government sufficient statutes to secure the civil rights of all Americans of all races and to punish any person who deprives any Americans of their civil rights.

Senator STENNIS. Oh, unquestionably so. I think frankly a great deal of these proposals are just political. They are politically motivated to have issues, so-called issues, at least, in elections, making a record, so to speak. We already have the law, the needed law on the books.

Senator ERVIN. I would like to call the Senator's attention to the statute, 18 U.S.C. 242, "Deprivation of Rights Under Color of Law":

Whoever under color of any law, statute, ordinance, regulation or custom willfully subjects any inhabitants of any State, territory or district to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, or to give punishment, pains or penalties on account of such inhabitant being an alien or by reason of his color or race, than are prescribed for the punishment of citizens shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both.

Now, that statute has reference to action of State officers or local officers. I will ask the Senator if that doesn't make any State or local officer of any character a criminal, subject to fine or imprisonment, if he willfully deprives any American citizen of any right, privilege or immunity secured by the Constitution or laws of the United States.

Senator STENNIS. Well, that is correct, and as I recall, that is the section in which we have cases that have already been decided, yes.

Senator ERVIN. That is right.

Senator STENNIS. The law is very settled and clear on it.

Senator ERVIN. Then I will call the Senator's attention to 18 U.S.C., section 241, which concerns conspiracy:

If two or more persons conspire to injure, oppress threaten or intimate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or conspire to exercise the

same, or if two or more persons go in disguise on the highway or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000 or imprisoned not more than 10 years, or both.

I will ask the Senator if these statutes do not make any citizen who conspires or any party to a conspiracy which deprives any American citizen of any color, of any right secured to him by the Constitution or laws of the United States, a criminal subject to fine and imprisonment?

Senator STENNIS. It certainly does. They are very sweeping in their nature. The first one you read pertains to the facts, the second to the conspiracy.

Senator ERVIN. The Senator has been here a long time. I will not detain you much longer, but I will ask this general question.

Senator STENNIS. Pardon me just a minute.

Senator ERVIN. Are there not Federal statutes already upon the statute books and embodied in title 42 of the United States Code which give civil remedies by way of damages for any injury done to any person deprived of any right under the Constitution or laws of the United States or which would grant him preventive relief against any threat or deprivation of any right or privilege under the Constitution or the laws of the United States?

Senator STENNIS. Statutes are very, very complete in that respect and very broad.

Senator ERVIN. I will ask the Senator in his judgment as an experienced lawyer if the statutes already upon the books are not sufficient to punish any deprivation or redress any wrong of any civil right of any citizen and to prevent any threatened deprivation and therefore any other civil right statutes are wholly unnecessary.

Senator STENNIS. I think the Senator is correct. The statutes are very complete. You have to do it according to judicial processes, judicial procedure which you should have to do.

Senator ERVIN. The reason that the Commission comes with recommendations to Congress is because they don't have to prove anything to Congress.

Senator STENNIS. That is right.

Senator ERVIN. All you have got to do is list—

Senator STENNIS. That is right, and this is a way to get around the fundamental concepts of our administration of justice as I see it. They try to make out the case in the Congress rather than in the courts.

Senator ERVIN. I only want to say the processes of the law are too slow and so they adopt the philosophy of the lynch mob and say, since the law is so slow we will take the thing in our own hands on a different basis.

Senator STENNIS. Yes. I thank the Senator for his comments.

Senator ERVIN. I will ask the Senator if he does not agree with me in the proposition that these recommendations about new laws in the civil rights field are calculated to lynch constitutional government in the United States as well as a system of government of laws rather than a government of men.

Senator STENNIS. Well, as I said a few minutes ago, there is no doubt in my mind we are having an evolutionary change. It is almost revolutionary change by following this concept here of changing the

approach and changing the remedy and going beyond the Constitution without changing it, just reinterpreting, and I call it a downgrading of individual rights and a downgrading of individual responsibilities which I think would eventually erode and destroy our very concept of government.

I want to mention one other point, too. This downgrading and talking about voting rights, it is one of the great privileges of our Government for a citizen to vote and I want those that are qualified to have that privilege but the idea of just taking away all the qualifications and letting everybody vote, I think is fundamentally unsound and I have said so before. I think that concept is another part of the downgrading of responsibility, downgrading of necessary achievements. A great deal has been said about the people that are eligible to vote that don't vote in any given election. I am not worried near as much about those that are eligible and don't vote as I am the ones that do vote that are not—they don't know what they are doing when they vote. They don't know what the issues are. They haven't weighed the issues and haven't weighed the qualifications of the candidate, but rather they vote in complete ignorance or in block voting.

I think that is the thing that we have for most immediate concern. And I almost worship the right of a person to vote in a proper way and when he has met the qualifications.

I thank the Chair.

Senator ERVIN. I would like to make this closing observation. The most precious possession of all of our people of all races is the constitutional system of government we now have and the system of laws which says that we should have a government of laws and not of men. I am convinced that Americans like the Senator from Mississippi who fight these laws proposed in a moment of national emotion, are really and truly fighting to preserve our system of constitutional government and our system of laws for the benefit of all Americans of all races and all generations, and the Senator from Mississippi is doing all he can do to keep the crusaders and the zealots from pushing down the column on which our temple of Government and laws rises.

Senator STENNIS. I thank the Senator for those very generous remarks. I follow the leadership of the Senator from North Carolina in his learning and application of that learning, follow it with great profit as do many of us, and I think that the Senate as a whole follows a great part of his wise counsel and advice. I thank the Senator, too, for the privilege of being here before his committee.

(The complete statement of Senator Stennis follows:)

STATEMENT OF SENATOR JOHN STENNIS

Mr. Chairman, and members of the subcommittee, I appreciate the opportunity to be here to express my strong opposition to the two bills, S. 1117 and S. 1219, which are the subject matter of this hearing.

I vigorously opposed the law enacted in 1957 which created the Civil Rights Commission. I have with equal vigor opposed its extension in the past. The history of this agency, and its one-sided adherence to concepts which are fostered and dominated by political expediency, have only served to reinforce my judgment that the Commission is neither necessary nor desirable. It is my conviction, both as a Senator and as a citizen of the United States, that to extend the life of the Commission and to give it added and expanded power would be a grave disservice to the entire Nation.

The Staff Director of the Commission, in his recent appearance before the subcommittee, endeavored to justify its further extension by saying that there is a need "for an agency able to give the kind of advice and assistance which will contribute to peaceful and permanent solutions to racial problems." Even if I should agree with this very dubious statement I would be compelled to say that the Commission on Civil Rights does not, on the basis of past performance, fit the description which the Staff Director gave.

On the record there is certainly nothing in the Commission's activities which would indicate that it has either the ability or the desire to bring about "peaceful and permanent solutions to racial problems." On the contrary, its activities in the past have been well—and perhaps designedly—calculated to foment strife, turmoil and bitterness and to pit people against people throughout the length and breadth of this great Nation of ours.

Far from bringing about peaceful solutions, I think it is clear that this Commission and its recommendations have actually helped create the strife, the bitterness, the demonstrations and the inevitable racial clashes which are now occurring. These demonstrations and these clashes produce unpleasant and unfavorable pictures which are repeatedly shown on television screens at home and abroad. The reaction is adverse, of course. No matter where propagandists may attempt to place the blame, the hard fact is that the Federal Government, through this Commission, has helped create and has actually encouraged the very strife and conflict which has resulted in the unfavorable pictures. Furthermore, neither the Commission nor any other Federal agency is making any real effort to show the true picture of the opportunities being afforded our Negro citizens and their advancement and achievements in every field of activity. Certainly, none of the leading nations of the world compare favorably with us in this area.

The Commission's inflammatory statements, its findings based on biased and flimsy evidence, its apparent tendency to believe the worst, and its bizarre and absurd recommendations are hardly the type of oil which would be poured on troubled political waters by an agency truly and earnestly interested in peaceful solutions. The aid and comfort which it has rendered and is rendering to extremists in the field of so-called civil rights find a logical outlet in the current wave of disorders and disturbances which are now sweeping the Nation.

The Commission perhaps achieved the epitome of absurdity in its recent recommendation that Federal funds be withheld from a sovereign State of the Union because the Commission—acting as prosecutor, judge and jury—came to the unilateral conclusion that there were open and flagrant violations of constitutional guarantees in the State of Mississippi.

The Commission in its interim report of April 16, 1963, "urgently requested" that "the Congress and the President consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State which continues to refuse to abide by the Constitution and laws of the United States."

Even this recommendation for a bill of attainder did not satisfy the misguided zealots on the Commission. They felt compelled to go further and recommend that "the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi, until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States." The Commission was not even judicial or fair enough to suggest that an impartial determination be made as to whether the State of Mississippi was guilty of its outrageous charges. They acted upon an assumption of guilt and shifted the burden of proof to the State of Mississippi to demonstrate its innocence.

What confidence can be imposed in an agency which would attempt to further its misbegotten concepts of constitutional rights by such a flagrantly unconstitutional method?

At the very least the Commission comes before the Congress as a legislative and judicial freak—a worse than useless appendage to the vast array of existing and overlapping Federal agencies.

Let me return to the extreme and absurd recommendations which the Commission made concerning the State of Mississippi. The Commission's statement was met—immediately and almost unanimously—by a literal torrent of repudiation, condemnation, and careful disassociation. This came from every source and quarter—from the President, from the majority leader of the Senate, from Members of Congress on both sides of the aisle, and from the editorial pages of our leading newspapers and other publications.

The analysis of one commentator deserves special comment. He pointed out that if a State must live up to the Constitution only because it gets more out of the Union than it puts in, then every State which pays more taxes than the Federal benefits which it receives must be ripe for secession.

The condemnation and ridicule which greeted the Commission's recommendation was so complete and unanimous that even the Commission itself has now felt compelled to renounce and disavow it. Even though the recommendation was spelled out in clear written English language the staff Director and a prominent member of the Commission plead in their appearance before this subcommittee that they really didn't mean what they said and that the Commission was "misquoted" and "widely misconstrued." This strategic retreat is not overly convincing, particularly in the light of the President's prompt and appropriate reaction to the recommendation. The President repudiated it in these words:

"I don't have the power to cut off the aid in a general way as was proposed by the Civil Rights Commission, and I would think it would probably be unwise to give the President of the United States that kind of power because it could start in one State and for one reason or another it might be moved to another State which was not measuring up as the President would like to see it measure up in one way or another."

The distorted thinking of the Commission can best be illustrated by its unsupported and false statement that "Even children, at the brink of starvation, have been deprived of assistance by the callous and discriminatory acts of Mississippi officials administering Federal funds." The Commission apparently would right this alleged wrong by taking action to withhold from the needy people of the State of all races welfare funds such as old-age assistance, aid to the blind, child welfare funds, Federal lunchroom funds, and the other funds which are so necessary to the continued welfare of the indigent.

The latest available figures compiled by the Mississippi Department of Public Welfare discloses that 20,804 families receive welfare assistance for 62,839 children under the aid-to-dependent-children program. Of this group, 77.7 percent of these families were Negro, with 50,770 children. Of the funds involved, 79.07 percent of the total amount went to Negro children. In fact, the Civil Rights Commission somehow failed to discover that of all welfare payments made in Mississippi, under the various programs, 61 percent of the money went to Negroes. Yet, these are the people the Civil Rights Commission says will be helped if Federal funds are cut off from Mississippi. These are the people for whom the Commission professes to have such great solicitude.

The recommendations of the Commission would be laughable if they did not come from an agency of the Government which is charged with the duty of giving fair treatment to all of the citizens affected by its operations, not just to a special and privileged minority group. Even as the Commission charged that there were denials of constitutional rights in Mississippi it called for steps—the withholding of Federal funds from Mississippi—which would clearly, patently, and manifestly grossly violate the same Constitution.

The various Federal programs operating in Mississippi are administered under carefully detailed congressional enactments. None of them contain the authority to withhold funds from any State for the reason urged by the Commission. The Congress has repeatedly rejected this principle and has defeated many attempts to prohibit the expenditure of Federal funds in those States where so-called discrimination is alleged to exist. The Powell amendment has been repeatedly defeated both in committees and on the floor of both Houses of Congress.

Obviously the President can neither enlarge nor diminish the authority conferred upon him by the Congress with respect to these programs and I am relieved that he rejected out of hand the suggestion that he was vested with any such power. The Commission's proposal is unconstitutional on its face. There is just no provision in either the Constitution or the statutes for any kind or type of punitive action against an entire State for alleged violations of law by some individuals.

Although the Commission's policy has been thoroughly and completely repudiated there are still those who believe that it should be continued even though it seems to be admitted that, from its own viewpoint, it has largely fulfilled the purpose for which it was created. The staff director in his appearance before you said that it "is appropriate to ask at this juncture whether the major need is now for more facts or for constructive action based upon the facts known." He continued in the same vein by saying that "the major questions

before Congress are whether the Commission's factfinding role can be redefined in a manner which will permit it to perform a service of continuing significance and benefit to the Nation." Implicit in these statements is the recognition that the Commission's original task has been done and that the continuance of the Commission can be justified only if the Commission's role can be "redefined." I believe that the word "redefined" in bureaucratic parlance means granting greater and increased power. That is just what the Commission is asking the Congress for at this time.

Let me say again that I opposed the creation of this Frankenstein agency from the very start. It was represented to the Congress as a temporary information-gathering body which would go out of existence when its task was completed. However, true to the history of such "temporary" agencies, the Commission is still with us and is now clamoring for permanent life with increased powers, expanded jurisdiction, a larger staff, and more of the taxpayers' dollars to meddle into and interfere with matters which are of no legitimate concern to the Civil Rights Commission or of any other agency of the Federal Government.

There would be more merit in this proposal if the Commission could show some real and tangible accomplishments or if it had acted with less bias and partiality or with a sense of fairness and judicious self-restraint. However, it has not gathered reliable and trustworthy information which is of value to the Congress and the executive branch. On the contrary, it has solicited wholesale and often baseless complaints from anyone and everyone who thought they had a grievance resulting from the alleged violation of a so-called civil right. It has been quick and eager to issue headline-making accusations and condemnations but very slow in collecting complete, accurate and impartial information. Its reports have been of doubtful value even to those who are compelled to read them.

It is not denied that the Commission does actually solicit complaints and it cannot be denied that the complaints are received and considered in a manner which does not insure their accuracy, reliability, and trustworthiness. The evidence—if I may dignify it by that term—on which the Commission bases its findings and its ridiculous recommendations is accumulated, not under the protective shield of tried and proven judicial procedures, but in an ex parte manner by committees composed at least partially of lay citizens. The witnesses are not under oath and are not subject to cross-examination. The Commission does not even afford the fundamental constitutional right of an accused to be confronted with his accuser. In fact, the Commission, with no judicial safeguards whatsoever, has attempted to accuse, indict, convict, and punish an entire sovereign State on unproven and often irrelevant allegations.

Is the Congress to make this type of agency permanent? Are we to enact legislation in the future based on such investigations as have been made by the Commission? I submit that normal legislative processes should not be subverted in this manner and that the actions of the Congress should follow instead the proven deliberative process of committee study, investigation, and recommendation. I submit also that the executive branch of the Government should exercise its function of enforcing laws in accordance with our well-established traditions and precedents when a justifiable issue is properly presented to a duly constituted court or when there has been a judicial determination that a law has been violated.

Let me give some examples of the meddlesome, unrealistic, and entirely useless activities of the Commission. Both private citizens and public officials in Mississippi have furnished me with copies of some of the questionnaires sent out by the Commission. I am sure there are many others. One questionnaire was received by a prominent attorney in Mississippi with a covering letter dated November 1, 1962, which announced that the Commission was, of all things, conducting a survey of lawyers. Included in this questionnaire were such non-civil-rights questions as the age of the recipient, whether he was engaged in the practice of law, whether he was a college graduate, how long he had practiced, whether he was a member of the American Bar Association and the State bar association, etc. The pertinency of many of the questions to the field of civil rights is not readily apparent and there is sound reason to suspect that this was a "make work" project to justify the existence of the Commission and the employment of its staff.

In replying to the questionnaire the distinguished attorney to whom I have referred wrote the Commission and said:

"I have been practicing law nearly 50 years and am thoroughly familiar with the situation in the South relative to race relations, and there is more good will between the races in the South than you will find anywhere else in the world and which is being badly disturbed by your Commission, the NAACP, and such other groups that are doing more harm than good. In fact, such activities have set the advancement of the Negroes in the South back for 100 years."

He concluded by saying:

"The activities of such organizations as yours would be outright silly and ridiculous if it weren't for the fact that you are creating great dangers for this country and disturbing the peaceful relationship between the races and retarding the Negro race."

A circuit clerk in Mississippi responded to another meddlesome questionnaire sent out by the Commission by saying:

"In my opinion you are wasting the taxpayers' money by preparing and sending out these questionnaires; and I do not think that I should be answering your questions and encourage you to continue to waste money by sending out other questionnaires about matters which are not the legitimate business of the Federal Government."

"From an observation of your activities in Mississippi, it is my considered opinion that you are not serving any useful purpose whatsoever, but that you are encouraging and promoting racial strife and disorder. For this reason it is my opinion that Congress should abolish the Commission on Civil Rights."

This brings back to mind one of my original points, that is, that, whatever else this Commission might be capable of, its record fails completely to indicate that it has either the ability or the desire to bring about the "peaceful and permanent solutions to racial problems" which the staff director said was its objective. On the contrary, as the circuit clerk accurately stated, the Commission is "encouraging and promoting racial strife and disorder."

It is almost impossible for me to believe that there is any basis for contending that the Commission's record is such as to inspire any confidence in it as a trustworthy, impartial, and judicious agency of the Government. Certainly, its record does not inspire that confidence which would justify a broadening and expansion of its power and authority. Yet there is a new section in both bills now before the subcommittee which provides that the Commission shall: "Serve as a clearinghouse for information and provide advice and technical assistance to Government agencies, communities, industries, organizations, and individuals, in respect to equal protection of the laws, including but not limited to the fields of voting, education, employment, the use of public facilities, transportation, and the administration of justice."

On its very face the power and authority here sought is so broad and sweeping as to infringe upon the established jurisdiction of other agencies. The Commission would be authorized in civil rights cases to "provide advice and technical assistance" to all and sundry including Government agencies. I theorize that this means that it would have a staff of lawyers to provide advice and assistance to the Department of Justice which already has its own Civil Rights Division financed at the expense of the taxpayers. The Commission would be empowered to interfere in the "administration of justice" which I had thought was historically reserved for the courts.

The provision in both S. 1117 and 1219 which would endow the Commission with broad rulemaking power constitutes another grab for authority by this agency. Every student of the Constitution and administrative law knows that any rulemaking power should be exercised carefully within the framework of the basic legislation. Properly exercised it is the medium for the fulfillment of the congressional design. Improperly exercised it is a tool and a method for the assumption of unwarranted power. I think that the recent recommendations of the Commission show that it has prejudged every important issue which might be presented to it in the future and that the members can be expected to have little or no respect for the prescribed limits of their authority. Certainly it would be perilous for the Congress to enlarge their power.

While I am not advised, Mr. Chairman, of the number of personnel employed by the Commission, I am sure that the subcommittee will inquire closely into this question. Whatever the number it is apparent that the Commission has so little to do that its staff must make work for itself by dreaming up and sending out useless questionnaires which ask senseless questions on a variety of subjects many of which have nothing to do with civil rights or with any other subject within the appropriate jurisdiction of either the Commission or the Federal

Government. It is apparent to me that the sole and only value which this agency has is to satisfy from a political viewpoint the demands of minority groups.

In conclusion, Mr. Chairman, let me say that the entire record of the Commission leaves little doubt but that its members are imbued with preconceived opinions, judgments, philosophies, and motivations which render them utterly incapable of that fair, impartial, unbiased, and judicial approach which is so necessary to reasonable and harmonious relations between the races and to a peaceful solution of existing problems. Since the Commission members fail or refuse to recognize the basic truth that there are two sides to every question I think that the possibility of the Commission making any contribution to the improvement of racial relations is now foreclosed. It simply fails to recognize—as all fairminded persons must—that all too often spurious and baseless allegations, although apparently credible when made, fade and become discredited when the other side is afforded an opportunity to state its case.

I say again, Mr. Chairman, that the Congress will be performing an act of both mercy and sound judgment if we now let this useless appendage to the body politic die the peaceful death which the Congress originally ordained for it 6 years ago.

Instead of extending the life of this Commission—and thereby licensing it to continue and expand its agitational activities which succeed only in stirring up racial strife and discord—we would do a far greater service for the Nation if we devoted our energy to the restoration of peaceful and harmonious relations between the races. The Government should abandon its support of those who are so eager to sow racial bitterness and discontent for their own selfish ends. Let us return to the concept of rule by the established and orderly processes of law. Let us restore the problem on race relations to its proper place in the legal scheme of things and let men of good will work together for a proper and peaceful solution in accordance with established legal procedures and remedies without being hampered by the extremist activities of a group of political busybodies.

Senator ERVIN. Call the next witness.

Mr. CREECH. Mr. Chairman, the next witness is Mr. Roy Millenson, representing the American Jewish Committee.

Senator ERVIN. Senator Hart, do you have a statement?

Senator HART. We will be very brief but we plan to follow the witness here.

STATEMENT OF ROY H. MILLENSON, WASHINGTON REPRESENTATIVE, THE AMERICAN JEWISH COMMITTEE

Mr. MILLENSON. Mr. Chairman, if I may, I would like to summarize my remarks very briefly and let them be printed in the record.

Senator ERVIN. That will be all right. Let the record show that the entire statement will be inserted in the record immediately following your remarks.

Mr. MILLENSON. Thank you very much.

I represent the American Jewish Committee, a national organization with chapters throughout the country. I come here to testify with respect to the pending legislation in two aspects.

First, the American Jewish Committee endorses the legislative proposal that the Civil Rights Commission be made a permanent body.

In doing this we refer to the Democratic platform which is quite clear on the subject of recommending that the Civil Rights Commission be made permanent. We refer also to a statement made by President Kennedy himself to the American Jewish Committee only last month in which he observed that the fight to eliminate tensions within and among races and religions is a seemingly endless struggle that will long be with us.

We cite the fact that the Commission has done very effective work and that their recommendations have been constructive.

We make a second recommendation in our testimony with respect to section 5 of the administration bill which seeks to broaden the scope and duties of the Commission.

We feel that a broadened Civil Rights Commission would have an opportunity to deal with the symptoms of bigotry and get at the root causes of prejudice rather than confining itself to the manifest symptoms of the disease.

Such action could do much to reduce intergroup tensions and conflict, especially true in the large metropolitan areas where intergroup friction is becoming an increasingly difficult problem.

The American Jewish Committee has done extensive studies on this in the past—I cite some of them in detail on page 2 of my testimony. We feel that it is time for scientific knowledge to be applied to group tensions and conflict.

Mr. Chairman, I should also like to refer to a section of the 1960 Republican platform which I quote at the bottom of page 2 of my testimony with reference to the importance of citizen groups working within their communities on these various civil rights questions which confront us. We feel that an expanded Civil Rights Commission would offer an opportunity to enhance the work of such groups of which there are an increasing number, especially in the South.

In your own State of North Carolina, Mr. Chairman, Governor Sanford recently created a Good Neighbor Council and I have listed here on page 3 of my testimony human relations commissions in some several dozen cities of the South which are working now toward the solution of these problems.

In addition to these officially created human relations commissions, there are a goodly number of others unofficially established by chambers of commerce, civic associations, and other community groups interested in endeavoring in every constructive way to preserve racial harmony and good community relations and to avoid costly disorder.

It is of interest that the junior Senator from Michigan, Mr. Hart, is here in the audience today because he recently did an article for the American Jewish Committee Committee Reporter, on what professional help could do in helping in these human relations problems within the communities, professional intergroup relations work. If I may, Mr. Chairman, I very much would like this article to be a part of my testimony since Senator Hart is with us today.

Senator ERVIN. Yes. If you will indicate the article and—

Mr. MILLENSON. Yes, sir. "Human Relations Goes to Washington," by Senator Philip A. Hart in the March 1961 issue of AJC Committee Reporter.

Senator ERVIN. Let Senator Hart's article be printed in full in the record immediately after the witness' full statement.

Mr. MILLENSON. Thank you very much, Mr. Chairman.

Senator ERVIN. The committee appreciates very much your coming before us and giving us the benefit of your views and those of your organization.

Mr. MILLENSON. Thank you, sir. It is a privilege to appear.

(The complete statement of Mr. Millenson, together with the article from AJC Committee Reporter follow:)

TESTIMONY OF ROY H. MILLENSON, WASHINGTON NATIONAL REPRESENTATIVE, THE AMERICAN JEWISH COMMITTEE ON EXTENSION OF CIVIL RIGHTS COMMISSION

The American Jewish Committee, a national educational and human relations organization with 62 chapters or units and members in over 600 communities in the United States, was organized in 1906 and incorporated by special act of the New York State Legislature in 1911. It is an organization dedicated to human rights and the furthering of better intergroup relations.

With reference to the pending legislation to extend the life of the Commission on Civil Rights, the American Jewish Committee endorses the proposal to make the Commission a permanent agency in the executive branch of the Government.

The 1960 Democratic platform was very clear on this subject. It stated:

"In 1949 the President's Committee on Civil Rights recommended a permanent Commission on Civil Rights. The new Democratic administration will broaden the scope and strengthen the powers of the present Commission and make it permanent."

That the problems which face the Civil Rights Commission will long be with us was most recently recognized by the President when in his message last month to the American Jewish Committee's 58th annual meeting he referred to the fight to "eliminate tensions within and among races and religions" as a "seemingly endless struggle."

It is encouraging to note that in the bipartisan spirit of support for civil rights goals, there has also been substantial Republican support manifested for giving the Commission permanent status.

The continuing and constructive contributions already made by the Commission need no emphasis in this testimony. The very nature of its studies, findings, and recommendations commend the Commission's continuing functioning in an area of concern where, at present rates of progress, resolution of the Nation's racial problems are not in the early offing. Also, the very continued existence of the Commission offers a forum outside the partisan political arena and outside the emotions of the growing battlefields of racial conflict which presents an opportunity for a studied resolution of the difficulties at hand.

Despite the decline of overt discrimination and the amelioration of prejudice, group tensions are on the rise in America. In part, this is a manifestation of the rise in the expectations of America's traditionally deprived peoples. The more these Americans taste of freedom and equality, the more they want of these. This is natural and understandable.

Indeed, it would be peculiar and tragic if any people in America would accept less than full equality. Another reason for the dramatic rise in group tensions is the "in migration" of masses into the decaying central city core. These new "in migrants" are the least educated, least skilled, and the most justifiably angry component of our population.

Attorney General Kennedy put his finger on the situation when he said recently that the tragic events in Birmingham could predictably occur in every great American city, North, South, East, and West.

There lurks potential violence amidst present conflict and past grievance in every American city. No longer are these forces easily suppressed. The angry rebels no longer will wait, and the complacent traditional power structure no longer has the means to stifle their protest.

The American city is not only a center of trade and commerce, but is becoming the cockpit of community conflict.

We also wish to lend our especial endorsement to section 5 of the administration bill which seeks to broaden the scope of the duties of the Commission. A broadened Civil Rights Commission would have an opportunity to deal with the symptoms of bigotry and to get at the root causes of prejudice rather than confining itself to the manifest symptoms of the disease. Such action could do much to reduce intergroup tensions and conflict, especially true in the large metropolitan areas where intergroup friction is becoming an increasingly difficult problem.

More than a decade ago the American Jewish Committee's "Studies in Prejudice," and especially the foundation volume, "The Authoritarian Personality," was the first scientific exposé of the real nature of prejudice and the personalities that are its carriers. These studies have been a major factor in revolutionizing public understanding and public policy with respect to prejudice and discrimination.

The time has now come for the same kind of knowledge to be applied to group tensions and conflict. Studies already conducted by the Commission have covered a wide range of problems. The Commission is now in a position to pursue its researches in great depth to seek out the very sources of group tensions and conflict so that these conflicts might best be resolved. A broadened Civil Rights Commission could well apply itself to this end.

In addition, the 1960 Republican platform provides another potential for constructive activity by an expanded Civil Rights Commission. That platform states:

"Finally we recognize that civil rights is a responsibility not only of States and localities; it is a national problem and a national responsibility. The Federal Government should take the initiative in promoting intergroup conferences among those who, in their communities, are earnestly seeking solutions of the complex problems of desegregation—to the end that closed channels of communication may be opened, tensions eased, and a cooperative solution of local problems may be sought."

An expanded Civil Rights Commission would indeed offer an opportunity to enhance the work of such groups, which are increasing in number, especially in the South. In the "border States" there have been established by law State human relations commissions in Delaware, Kentucky, Maryland, Missouri, and West Virginia. And, most recently, Governor Sanford, of North Carolina, has created a good neighbor council which will function as a human relations commission in that Deep South State.

In addition, in the Deep South, we find human relations commissions have been created by city governments in, among other places:

Coral Gables, Fla.	Savannah, Ga.	Florence, S.C.
Daytona Beach, Fla.	Louisville, Ky.	Knoxville, Tenn.
Fort Lauderdale, Fla.	Charlotte, N.C.	Nashville, Tenn.
Fort Pierce, Fla.	Durham, N.C.	Oak Ridge, Tenn.
Miami, Fla.	Greensboro, N.C.	Houston, Tex.
Orlando, Fla.	High Point, N.C.	Arlington, Va.
St. Petersburg, Fla.	Raleigh, N.C.	Lynchburg, Va.
Tampa, Fla.	Winston-Salem, N.C.	Richmond, Va.
Winter Park, Fla.		

And in still more southern cities, unofficial human relations commissions have been established by chambers of commerce, civic associations, and other community groups interested in endeavoring in every constructive way to preserve racial harmony and good community relations and avoid costly disorder.

The American Jewish Committee therefore endorses a permanent Civil Rights Commission, sufficiently broadened in scope so that it might deal adequately and fully with a prime problem which faces our Nation.

[From the Committee Reporter, March 1961]

Democratic Platform Plank—1960: We propose a Federal Bureau of Intergroup Relations to help solve problems of discrimination in housing, education, employment, and community opportunities in general. The Bureau would assist in the solution of problems arising from the resettlement of immigrants and migrants within our own country and in resolving religious, social, and other tensions when they arise.

Republican Platform Plank—1960: The Federal Government should take the initiative in promoting intergroup conferences among those who in their communities are earnestly seeking solutions of the complex problems of desegregation to the end that closed channels of communication may be opened, tensions eased and a cooperative solution of local problems may be sought. * * * We pledge the full use of the power, resources and leadership of the Federal Government * * *.

HUMAN RELATIONS GOES TO WASHINGTON

(By Senator Phillip A. Hart)

Along with usual political promises, presidential campaigns have a way of generating an occasional new commitment to a new idea. This last campaign

was no exception. The concept of a Department of Urban Affairs was just such an idea and there is good reason to believe it will soon come into being.

The almost fantastic accumulation of problems facing our cities is not, however, simply a matter of physical decay and technological change. These are enormous problems to be sure, housing, highways, schools, water, transportation, and the like. But continuing population growth, on the one hand, and population movement, on the other, have added a social dimension of equal significance.

Consider, for example, that we have become a nation predominately of "big" cities; about 108 million, or 60 percent, of our citizens living in 168 standard metropolitan areas. This is a city dwelling population larger than the national total in 1920. Not only has our farm population been dwindling from about 32 million to around 20 million during the period, but perhaps the most striking feature of this population shift has been the movement of more than 2½ million Negroes from the old South to the urban North and West in the decade between 1940-50. This shift has continued into the sixties. Coupled with it is movement in the East of nearly a million Puerto Ricans from the island to the mainland; and in the West the movement of an estimated 2½ million more Spanish-speaking people from Mexico into the States.

Movements of these dimensions had their counterpart earlier in this century, of course, with the immigration waves from central and southern Europe. It was these masses, agrarian in background, limited in education, with their distinctive cultural, language, and religious differences, who had become the first victims of the urban slum. It was, in fact, by their strong backs, and with their calloused hands that our cities were built. The heightened intergroup tension before and after World War I, the spread of the KKK into the cities culminating in the mass parade of costumed marchers in broad daylight down Pennsylvania Avenue in the Nation's Capital, the intensity of religious hatred in the Al Smith campaign had characterized the problems of urban adjustment being experienced by the immigrant. In similar fashion, new problems arising out of race were to emerge in the cities as World War II got underway.

Problems growing out of religious differences have perhaps disappeared less than they have changed. The metamorphosis from street fights, rock throwing, and vandalism, which characterized the economic fears and competitions between groups, to political factionalism and contests for power in the big city political machines now has moved on to the suburban ramparts of the country club and the industrial or financial board of directors. Thus the problem of attaining full political participation, equal economic status, and true social acceptance remains a continuing challenge to this day's city dweller of the second half of the 20th century, of whatever background, old and new alike.

While the facts demonstrated that there is no inherent relationship between poverty and group background, between illiteracy or dependency or crime and such identity, in making this point we have often failed to appreciate that group identity is a concomitant of such problems. We always make the point that racial, or religious discrimination often have created a vicious circle forcing continued limitation on the minority group member who, because of lack of education or status, is forced to remain dependent. But we have failed to emphasize and add that no attack on poverty or crime or slum housing or urban renewal can hope to be very effective without taking into account the factors of racial, religious, and ethnic group interests which are tied into them.

Fortunately, from experience during the past two decades, we know that both skills and knowledge can be developed to deal precisely with those aspects of urban life which have historically been the most explosive—the problems, tensions, and misunderstandings growing out of group differences. In these 20 years some 70 cities have created official committees or commissions on intergroup or human relations. Some 25 States have established such agencies and have organized informally under the Governors' Committee on Civil Rights. Collectively, these units of government now appropriate approximately \$5 million for advisory and regulatory services to assist these communities in dealing with these problems. If growth is a measure of success, then this idea is working. It has even found roots in the South with more and more communities setting up inter-racial study committees in the face of increasing pressure from the new student sit-in movement.

With the creation of a Federal Department of Urban Affairs, happily now at hand, perhaps at long last it will be possible to establish within it a Federal Intergroup Relations Service. Such a unit could function as a national service bureau for local, State, and regional intergroup relations agencies and could work with smaller communities not having their own intergroup relations committees.

Perhaps this is what then-Senator Lyndon B. Johnson was reaching for as a concept when he proposed his Federal Community Relations Service. Such a Federal Intergroup Relations Service is consistent with the objectives contained in the Douglas bill for technical assistance in meeting the school desegregation crisis. It simply extends this idea into other issues and other areas. Such a unit could serve as an information clearinghouse for both public and voluntary intergroup relations agencies; it could provide badly needed consultative services. It could engage in fact-gathering and stimulate research as well as providing help in establishing training programs for professional and volunteers in the field including the sponsorship of pilot projects.

Federal concern with intergroup relations problems is not entirely a new concept. Appropriately, there are intergroup relations officers in the Housing and Home Finance Agency (HHFA), the agency most likely to become the nucleus for the new Urban Affairs Department. There are similar specialists in the Office of Education, the Post Office, the Defense Department, the Department of Labor. What is now needed, additionally, is a service that is directed toward the community.

Because of its strategic location within the Department of Urban Affairs, a national intergroup relations service would be able to cut across various functional areas all of which are manifest in urban problems. Such a service provides a challenging opportunity to bring to bear all the knowledge we have painfully obtained, all the experience and skills we have gained as part of our total attack on the problems of our cities. To fail to see this, to look upon the urban problem as physical and industrial and financial without some realization of this additional and critical aspect, the cities social existence would be short sighted indeed. If ever there was an illustration of what is meant by a "New Frontier" here is one and the opportunity for action is at hand.

Senator ERVIN. Senator, we will have your testimony.

Senator HART. We will be very brief.

Senator ERVIN. I know you have got a lot to do yourself.

STATEMENT OF HON. PHILIP A. HART, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator HART. Mr. Chairman, thank you very much. I will be very brief in my introduction, briefer than I had intended in the hope that you may find it possible to hear the witness. His statement is less than three pages.

Senator ERVIN. Well, we will be glad to.

Senator HART. Mr. Chairman, and members of the committee, I thank you for giving me what I regard as a high privilege this morning in introducing your next witness. He is Richard H. Austin of Detroit.

Mr. Austin for more than 20 years has been a practicing, certified public accountant in Michigan. He is now the senior partner in a firm bearing his name.

He is interestingly a member of the board of directors of the Michigan Association of CPA's which includes about 2,500 of our 3,000 CPA's in Michigan. He is a member of the board of directors also of the Mammoth Life & Accident Insurance Co. of Kentucky, a multi-million-dollar firm.

He is a member of the board of directors of Demidco. This is the Detroit Metropolitan Industrial Development Corp. which is the local agency formed to participate in ARA financing in the metropolitan Detroit area.

He is a member of the executive committee of the Detroit Olympics Committee. Detroit will host, we hope, the 1968 Olympics. We are the American designee authorized to extend our country's invitation. Mr. Austin actively is supporting this effort.

He is a member of the board of directors of both the Urban League of Detroit and the Detroit Branch of the NAACP. He has served in the last year as a delegate to the Michigan Constitutional Convention, and there served as vice chairman of the finance and taxation committee of the convention.

He is the chairman of the 15th Congressional District Democratic Committee and appears here this morning as a member of the Michigan Advisory Committee to the U.S. Commission on Civil Rights. And I appreciate your kindness.

Senator EVRIN. We are delighted to have you and Mr. Austin with us, Senator. You have got a very fine Senator in the person of Senator Hart.

Senator HART. Thank you.

Senator ERVIN. I will also say in the person of Senator McNamara. We are glad to have you with us. I am sorry I kept you waiting so long. I would have taken you earlier.

Senator HART. Indeed, no. We understood the pressure of time that attached to the prior witness and we both enjoyed, Senator Ervin, listening to you and Senator Stennis.

Senator ERVIN. Thank you.

STATEMENT OF RICHARD H. AUSTIN, MICHIGAN ADVISORY COMMITTEE OF THE COMMISSION ON CIVIL RIGHTS

Mr. AUSTIN. Thank you.

I am indebted to both you and Senator Hart for this opportunity and I can, too, feel that Senator Hart is a very fine representative for the people of the State of Michigan. I also regard him as a very close friend.

Mr. Chairman, I am from Detroit, of course, and I appear before this subcommittee as a member of the Michigan Advisory Committee to the U.S. Commission on Civil Rights in support of the bill to extend the life of that Commission and substantially extend its functions.

The many faceted civil rights problem is one of the most crucial and stubborn domestic problems facing our Nation at all levels of government.

According to the 1961 U.S. Commission on Civil Rights report, the Commission still has a great deal of work to do. The following are excerpts from a portion of that report:

The great American experiment in self-government began for white people only.

The inconsistency between the Nation's principles and its practices has diminished over the years * * * the gains have been considerable * * * the gap between the promise of liberty and its fulfillment is narrower today than it has ever been.

Yet a gap remains.

Despite * * * progress, however, the Nation still faces substantial and urgent problems in civil rights.

Now, that is the end of the quotation from the report.

There is no doubt that the events of the past several weeks have resulted in a reexamination of the facts relating to racial discrimination in every major American city. This has certainly been true in Michigan, and particularly in the Detroit metropolitan area.

Presently the city of Detroit and the Detroit Board of Education are being urged to review the school assignment policies which have

brought about segregated schools as a result of segregated housing patterns. This is an area in which American cities throughout the Nation will need the most skilled and competent advice whether they are faced with breaking down legally established patterns of segregation in the schools or with de facto segregation resulting from housing patterns.

Certainly, as this problem is worked out in Detroit, the experience we have there will be of value in other cities. And no doubt our civic and school officials will be seeking advice and guidance based on the experience of other cities.

I point to this, Mr. Chairman, because it is a clear example of what use could today be made of the clearinghouse services authorized in the bills before you. It is also an illustration of the type of problem where technically qualified and experienced personnel could be of great assistance to communities seeking to end segregation in the schools.

In 1960 the Commission on Civil Rights came to the city of Detroit for one of its several public hearings. I believe it is correct to say that the community generally welcomed the careful and comprehensive look the Commission took into employment practices, segregation in housing, the resulting segregation in the public schools, the availability of vocational education and apprenticeship training to minority groups, and the treatment of Negroes by police officers.

We in Michigan have been proud that the Commission has continued under the chairmanship of Dr. John Hannah, who, as you know, is the president of Michigan State University. Dr. Hannah has the respect of a very wide cross section of the people of our State. His is the type of leadership which commands respect and attention even when there are many disagreements with specific recommendations.

Recently the Michigan Advisory Committee inquired of several community service and social action organizations and agencies, governmental as well as private, "What are the major areas of concern in Michigan in the field of civil rights?" Each organization was asked to list those problems which it felt might be the subject of consideration by the U.S. Commission on Civil Rights. Included in the groups contacted—and this is a rather impressive group and I want to make sure that they get into the record—included in the group were the Jewish Community Council, Jewish Labor Committee, Detroit Youth Commission, Detroit Urban League, Detroit branch of the NAACP, community relations department of the Detroit public schools, Detroit Commission on Community Relations, Michigan Employment Security Commission, Antidefamation League, Civil Liberties Union, Michigan Catholic Conference, AFL-CIO, Grand Rapids Urban League—and this shows you the geographical representation of the group—Burrough Community Association, Inc., Ypsilanti Human Relations Commission, Kalamazoo Community Relations Board, Grand Rapids Human Relations Commission, the attorney general of Michigan, and the Battle Creek Human Relations Commission; and this is only a partial list.

Most of the Michigan organizations responded with a letter expressing their views as to the most urgent civil rights problems of national import, scope or concern. The following appeared most frequently as the most urgent problem areas:

1. Equal employment opportunities, embracing training opportunities, hiring practices, and upgrading.

2. Equal opportunity in housing, involving racial, religious, and ethnic discrimination in housing facilities and home financing.
3. Equal educational opportunity, which includes the problem of segregated schools resulting from segregated housing patterns.
4. Unequal law enforcement.

5. Discrimination in hospital and medical services, including such factors as denials on the basis of race and internship and residency training, professional staff membership, and training of nurses.

It should be mentioned, Mr. Chairman, that the problem of voluntary hospital discrimination does have a very important national significance because these hospitals, mainly voluntary, are the recipients of Hill-Burton funds and tax exemptions. These are governmental subsidies that are supported by people, regardless of their race, but very often they are denied services because of their race.

It is certainly the hope of those of us who have been privileged to work with the Commission and its able staff that its life will be extended for a sufficient period of time to permit orderly planning and administration of the Commission's work.

No one should assume, because the pace has quickened and is surrounded by a new sense of urgency, that the balance of the road toward full civil rights for all our citizens on which we are embarked will be smooth and easy.

We will, on the contrary, need the skills and talents of the best trained and staffed public and private groups at all levels of Government. And the U.S. Civil Rights Commission has a special role to perform, a special service to render.

Several communities, especially in northern industrial areas, have moved ahead in establishing commissions and agencies to deal with problems arising in the field of civil rights. On the other hand, many States and communities have no official agencies concerned with these problems.

A national commission is needed, as in other fields, to serve as a clearinghouse for dissemination of information and coordination of efforts in this field. Also it must be clearly established that national policy and purpose is involved—not a partisan political or sectional issue. Indeed, the international image of the Nation is at stake.

One need not be an expert to know that the passage of civil rights acts in a State legislature or in Congress is but the beginning. It is equally important—perhaps even more so—to see that the intent and spirit of the legislation is carried out. There is so much discussion about the new laws which we need that I sometimes fear we forget the ever important responsibility of seeing that existing laws are fully and effectively implemented.

Certainly it is in this area of activity—of providing information, advice and assistance to National, State and local government units—that the outstanding work of the Commission should be continued and expanded.

Mr. Chairman, I have asked or I am asking to have inserted in the record of this hearing a speech given by Mr. Francis A. Kornegay, executive director of the Detroit Urban League, entitled "Our Community: Seven Critical Problems Facing Us."

I am asking that this be inserted in the record because I think it points up for the committee the expression of one who is quite capable

of analyzing the situation, the problems that face those of us who live in a large metropolitan industrial center.

Senator ERVIN. Leave one with the reporter.

Mr. AUSTIN. Thank you very much.

Senator ERVIN. It will be received and printed in full.

Mr. AUSTIN. Thank you, Mr. Chairman, for giving me this opportunity.

Senator ERVIN. Thank you for coming before us and giving us the benefit of your views and experience.

Mr. AUSTIN. Thank you.

Senator HART. Thank you.

Senator ERVIN. The record as presented by Senator Hart shows that you have done a very fine job in the life of the city of Detroit.

Senator HART. Thank you for that comment, Mr. Chairman.

(The booklet by Francis A. Kornegay will appear in the appendix.)

Senator ERVIN. We will take a recess until 3 o'clock.

(Whereupon, at 12:50 p.m., the hearing was recessed, to reconvene at 3 p.m. on the same day.)

AFTERNOON SESSION

Senator ERVIN (presiding). The subcommittee will come to order.

We will have printed in the record at this point a letter written by Nicholas deB. Katzenbach, Deputy Attorney General, on behalf of the Department of Justice; and a letter written by Andrew J. Bie-miller, director, department of legislation, AFL-CIO; and a letter written by Mike Masaoka, Washington representative of the Japanese American Citizens League; and a letter written by McNeill Smith to Senator Philip Hart.

These will be printed in the record at this point. The last letter is inserted in the record at the request of Senator Hart.

(The letters referred to follow:)

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 27, 1963.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights,
Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department on S. 1117 and S. 1219.

S. 1117 would extend the life of the Civil Rights Commission for 4 years, while S. 1219 would make it a permanent agency in the executive branch of the Government. Both bills would give additional duties to the Commission, as suggested by the President in his message on civil rights of February 28, 1963. Under these bills the Commission would serve as a national clearinghouse for furnishing advice, information, and technical assistance with respect to equal protection of the laws to private or public agencies requesting such service. The subject areas would include voting, education, housing, administration of justice, employment, and use of public transportation and accommodations. S. 1117 also contains several technical amendments relating to the subpoenaing of witnesses and compensation of personnel.

The Department favors the assignment of the additional clearinghouse functions to the Commission. This is a logical development and expansion of the work thus far accomplished by the Commission. It will enable useful and effective correlation of the activities of various governmental agencies directed toward equal protection of the law in these various areas.

The Department also favors extension of the life of the Commission. It was originally intended to terminate in 1959. Congress has twice extended it for

2-year periods. Under present law it will terminate September 30, 1968. A meaningful extension of 4 years will enable adequate followup of activities already undertaken, and will allow sufficiently long-range planning for further activity in the additional areas proposed by these two bills. To feel, however, that a permanent Commission is needed would, as the President has suggested, seem to indicate too pessimistic an attitude toward solution of our problems. For these reasons we recommend the adoption of S. 1117, rather than S. 1219.

The Bureau of the Budget has advised that there is no objection to the submission of this report and enactment of S. 1117 would be in accord with the program of the President.

Sincerely yours,

NICHOLAS DEB. KATZENBACH.
Deputy Attorney General.

AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., May 28, 1963.

HON. SAM J. ERVIN, JR.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In connection with the current hearings of your subcommittee on S. 1117, a bill to continue for 4 years the Commission on Civil Rights and to broaden the scope of the duties of the Commission, I wish to express the support of the American Federation of Labor and Congress of Industrial Organizations for this bill.

The AFL-CIO supported establishment of the Civil Rights Commission in 1957. We believe an extension of the Commission and a broadening of the scope of the duties and activities of the Commission is an urgent necessity to meet the problems and responsibilities that face the United States in the area of civil rights.

Mr. Chairman, I respectfully request that this letter be included in the record of hearings on S. 1117.

Sincerely yours,

ANDREW J. BIRMILLER,
Director, Department of Legislation.

JAPANESE AMERICAN CITIZENS LEAGUE,
Washington, D.C., May 22, 1963.

HON. SAM J. ERVIN, JR.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: On behalf of the Japanese American Citizens League, the only national organization of Americans of Japanese ancestry, may we go on record with your subcommittee as urging the extension of the existence of the U.S. Civil Rights Commission and expanding its duties and responsibilities.

We prefer that the Commission be established as a permanent and independent agency of the U.S. Government. If this is not possible at this time, we urge that its existence be continued for at least 4 more years beyond its present expiration date of November 30, 1963.

We believe that at the minimum its powers and authority and staff should be increased so that it may serve as a clearinghouse for civil rights information and may provide technical assistance to Government agencies, communities, industries, organizations, and individuals in respect to equal protection of the laws. Beyond this, we would like to have the Commission provided the power and the authority to enforce the civil rights of all Americans through court and other appropriate action.

Others have explained the scope and the success of the current and past activities of the Commission, as well as to urge the necessity for both an extended and permanent existence and enlarged authority and staff for the Commission. May we associate ourselves with our fellow organizations and individuals of good will who would have the Congress legislate that all Americans may have equal opportunity and dignity. The time is long past due when the legislative caught up with the judicial and the executive branches in dealing with this very important aspect of our national life.

Inasmuch as we understand that these hearings are to be limited to the consideration of legislation relating to the U.S. Civil Rights Commission, we shall not in this letter indicate our concern that your subcommittee and the Congress consider and pass other civil rights legislation too during this session.

On the other hand, we do wish to make clear that, although the Negro American is the largest minority subject to the deprivation of civil rights at this time, there are other American minorities too who have an important stake in the continued life of the Commission. These include, among others, the Spanish Americans, the American Indians, the Jewish Americans, and the Asian Americans.

As your subcommittee is aware, we Americans of Japanese ancestry know from personal experience during World War II the meaning of the loss of the many and great immunities, privileges, and opportunities of American citizenship, as well as the respect and dignity to which all Americans should be entitled as a matter of right and decency.

Had there been a U.S. Commission on Civil Rights to investigate the facts and to recommend appropriate action to the executive and legislative branches of Government, we might have had hope that, in spite of the hate and hysteria fomented by war and the historic prejudice of some against those of Japanese ancestry on the west coast, truth and justice would prevail and the constitutional rights of all native-born citizens protected. And, the possibilities are that these American rights and privileges would have been preserved even for our small nationality minority.

Respectfully submitted.

MIKE MASAOKA,
Washington Representative.

SMITH, MOORE, SMITH, SCHELL & HUNTER,
ATTORNEYS AND COUNSELORS-AT-LAW,
Greensboro, N.C., May 21, 1963.

Re S. 1117

Senator PHILIP A. HART,
U.S. Senate, Washington, D.C.

DEAR SIR: Thank you for your letter expressing the hope that it might be possible for me to appear before the Senate Subcommittee on Constitutional Rights in support of continuing the important work of the Commission on Civil Rights.

The hearings have been scheduled for May 21, 22, and 23 and it will not be practicable for me to attend on any of these dates. However, I would want to be recorded as favoring an extension of the life of the Commission.

From January 1959 to December 1962 I served as Chairman of the North Carolina Advisory Committee to the Commission on Civil Rights. The collection and publication of information by the Commission was generally well received in North Carolina and this service met a definite need which, in my opinion, still continues. This need is not confined to North Carolina or any section of the country. No other agency, insofar as I know, is in a position to collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution, nor to appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution. In order to support sound policies of government, whether local or National Government, the citizens need a great deal of information. What is needed is light, not heat. In all the charges and countercharges concerning equal protection of the laws there has been a great deal of heat and an insufficient amount of light. As an agency of the Federal Government, the Commission on Civil Rights is in a unique position to provide light. It would be a mistake in my opinion, to have this source of light shut off.

This is not to say that every suggestion and recommendation of the Commission must be approved and adopted. There is room for wide differences as to what action should be taken by Government in this as well as in other matters, but because we may disagree with this or that proposal as submitted in the past by the Commission, we should not on that account abolish the Commission. That would stop the collection of information which we all need in order to decide on what is a proper course of action.

The aspect of the work of the Commission with which I have been most familiar has been that of the Advisory Committee in North Carolina. From its

Inception in 1959, this committee followed a policy of meeting in the principal cities across the State. All the meetings were open to the public. The press coverage was fair and adequate. The editorial approval of the work of the committee was generous. Many persons from all walks of life in North Carolina, both in and out of government, have expressed appreciation for the very existence of the committee, composed entirely of North Carolinians, representing the various geographical, racial, and political interests of the State. This was a ready forum in which interested citizens could raise questions of current concern about equal protection of the laws; that is, about how fairly and impartially government was serving all the citizens of the State. In the view of many, this forum for public discussion allowed the citizens generally to consider these questions more calmly and reasonably than in the courtroom in a contested suit, in the halls of the legislature or in executive offices or in the midst of picketing of governmental facilities.

This local forum, having an official auspice because of its establishment pursuant to an act of Congress, yet without any enforcement powers, is in my opinion a most useful civic institution. No voluntary private organization can serve the same purpose as well. Whatever the private auspices, both accessibility and representation are open to suspicion.

In addition to the open forum service performed by the State advisory committees, these committees have (as indicated by the experience of the North Carolina Advisory Committee) secured valuable cooperation from State and local officials, as well as Federal officials operating in the State, in supplying needed information not otherwise available. A copy of the collected reports of the North Carolina Advisory Committee during the period 1959-62 is being sent to you, under separate cover, to illustrate the type of information that was collected both from public hearings and independent inquiries made by the committee and the manner in which the information was presented to the general public of the State. The reports on the various subjects were released from time to time as they were made and widely circulated in the public offices, press, and the schools and libraries of the State. The requests from many sources throughout the State for further studies indicate the continuing need for this service. Senator Jordan spoke most graciously of the work of the North Carolina Advisory Committee in his remarks on the Senate floor August 30, 1961.

I concur in the view often expressed by Senator Ervin that how local governments deal with their citizens, as well as how human beings respect each other outside of their governmental relations, must ultimately depend upon the will of the people where they live, move, and have their being. The Commission on Civil Rights and the State advisory committees in each State, have performed and in my opinion will continue to perform, if Congress continues their existence, a valuable function in providing the people of each locality, as well as the wider community of the Nation, channels of communication, and sources of current information not otherwise available. Both these functions are needed for the understanding and support of a wise consensus.

Very truly yours,

MCNEILL SMITH.

Senator ERVIN. Call the next witness.

Mr. CREECH. Mr. Chairman, the first witness this afternoon is Mr. Ralph Courtney, representing the Liberty lobby.

Mr. Courtney.

STATEMENT OF RALPH COURTNEY, ON BEHALF OF THE LIBERTY LOBBY, ACCOMPANIED BY JOHN W. WOOD, GENERAL COUNSEL, LIBERTY LOBBY

Mr. WOOD. Mr. Chairman, with your permission, I am John Wood, general counsel of the Liberty lobby. I would like to introduce Mr. Courtney of Spring Valley, N.Y., who is head of the Threefold Institute for Social Decentralization and also a board member of the Liberty lobby.

He is a former Paris correspondent for the New York Tribune and former head of the New York Tribune in Paris.

Senator ERVIN. We are glad to have both of you gentlemen with us. You may proceed.

Mr. COURTNEY. I need these magnifiers because my sight is failing. The Liberty lobby is a national organization of over 25,000 patriotic Americans who are seriously concerned with the increasing trend toward Federal centralism. We view these bills as vividly representative of this dangerous trend and strongly oppose them and urge their defeat.

It is the conviction of those who share the decentralist point of view that whenever a proposed bill singles out a group of citizens and proposes to do something for, or against, this group, then this bill aims at something that is contrary to the spirit of the American Constitution.

For the United States was not to have second- or third-class citizens; nor is there any justification in the Constitution for classifying citizens as workingmen or employers, or as anything else such as blacks and whites. All were to be full citizens, entitled to common and equal rights to life, liberty and the pursuit of happiness. Therefore, when any bill to extend or add to the rights of groups of citizens points to groups inferentially, such a bill may be suspected of subverting the Constitution. The so-called rights which this bill proposes may actually deny common rights on which this country was founded by creating special "rights" or, better said, special privileges to be given to groups in seeking their political support or for other reasons.

We have in America a politically centralized society.

Thus, a politically centralized society, which, in reality, is a hang-over from a former and more aristocratic view of social life, is still with us today. Instead of respecting common and equal rights, this type of society continues to hand out special favors. The corruption to which this method of handling public affairs has opened the door is bound to continue until social functions are decentralized and the powers of government can be limited to the safeguarding of equal rights.

Social decentralism draws a sharp distinction between the cultural, political, and economic functions of society. The cultural life of society will be the richer the more it is free from political direction. The political life of rights will be satisfactory to the extent that it maintains the principle of equal rights. The economy will be efficient and healthy when conducted on the basis of common rights, especially equal rights, in the pursuit of economic happiness.

The politically centralized social form which society has not been able to outgrow or shake off originated hundreds of years ago when the needs of men were very different from those today. The peoples of that time believed that the earth as well as the heavens was actually ruled by the Divinity Himself with the help of His angels, archangels, archai, et cetera. Therefore, the earthly rulership, with its governments and their ministers, was planned as a faithful reflection of this arrangement in the heavens. Such is the outmoded social form that we still follow today.

Certain members of this basically aristocratic setup were considered to be superior to others, and there was presumed to exist within this complex a supreme authority to which everything could, if necessary,

be referred back. Nowadays, it is clear to all citizens that there is nothing in the supreme political authority that by the greatest stretch of the imagination could be thought of as divine or even noble.

As long as political centralism permits victorious parties to create special privileges for themselves or their supporters, the racial element that is dominant in society becomes important. But as soon as the American doctrine is accepted; namely, that the creation and maintenance of rights is an equalitarian function, it will become unconstitutional to create special privileges and the racial problem will become a thing of the past.

The American alternative to political centralism is to be found in the Declaration of Independence where the task of safeguarding rights that are equal and held in common by all is entrusted to the Government of the newly conceived American society. If this concept had been followed, it would have limited the governmental function to the field of common rights, leaving education and business to develop freely on the basis of general rights. This separation and independent operation of the cultural, political, and economic functions of social life is functional decentralism.

Senator ERVIN. Mr. Courtney, I want to commend the excellence of your statement, which, as I construe it, gets to the essentials of what America was intended to be, and that is a land where all men would have equal rights, and special rights would be granted to none.

Mr. COURTNEY. Yes, sir.

Senator ERVIN. And, as I construe your statement, it is a very fine reflection of that American dream.

And you put your finger on the fundamental defect in legislation of the character that we have been discussing.

This legislation does nothing more or less than this: It picks out certain peoples of America solely upon the basis of their race and undertakes to give them special privileges which had never been sought by, or granted to, any other group of Americans in our history.

And whenever we get away from that or whenever we allow the Congress to convert itself into a legislative body which undertakes to pick out any group of Americans on the basis of race or any other peculiar quality and give them special privileges not granted to any other American in the history of our Nation, Congress is doing more to put an end to the American dream and destroy the American Government than any other body on earth can do.

Mr. COURTNEY. Yes, sir, that is absolutely correct.

Senator ERVIN. We certainly appreciate your coming here and speaking on behalf of your organization.

Mr. COURTNEY. Thank you very much, gentlemen.

Mr. GREECH. Mr. Chairman, the next witness is the Reverend Cornelius C. Tarplee. Mr. Tarplee is representing the national council, Episcopal Church Center.

Senator ERVIN. The subcommittee is delighted to have you with us.

STATEMENT OF REV. CORNELIUS C. TARPLEE, ASSOCIATE SECRETARY FOR INTERGROUP RELATIONS, NATIONAL COUNSEL, PROTESTANT EPISCOPAL CHURCH

Mr. TAPLEE. Thank you, Mr. Chairman.

It is a real privilege to be allowed to come before you, sir. My title, sir, is associate secretary for intergroup relations, and I speak as a staff person for the Right Reverend Frederick Warnecke, who is the chairman of the Department of Christian Social Relations of the Episcopal Church.

This statement of Bishop Warnecke's, I would like to have the privilege of presenting to you, sir.

Senator ERVIN. Yes, sir.

Mr. TAPLEE (reading):

The purpose of this statement is to urge that you lend your support to the extension of the existence of the Federal Civil Rights Commission.

All the major religious groups in the United States have stated their conviction that discrimination on racial and religious grounds is contrary to the will of God as revealed to them in tradition and Scripture. Authoritative statements published by the various official bodies of Protestant, Roman Catholic, and Jewish persuasions move from such a basic assertion to calling specifically upon their membership to work both corporately and individually for the abolition of all the social manifestations of prejudice.

The Protestant Episcopal Church in the United States of America, through the action of its general convention, conceives it to be the role of Government under the Federal Constitution to establish and preserve in the various orders of community life that justice which religion perceives to be commensurate with man's needs.

The Federal Civil Rights Commission has provided the information, the moral persuasion and the evaluative function basically necessary to peaceful progress in the quest for racial accord and human rights. Its termination at this critical moment in our history will, in our judgment, seriously hamper both private and governmental agencies in their work for the resolution of racial controversy. Should it not be continued in existence, the disillusioning effect on the minority groups and all the people of our Nation would be enormous.

We ask you to report favorably on Senate bill (S. 1117), an extension and strengthening of the Civil Rights Commission.

Senator ERVIN. Mr. Cornelius Tarplee, the committee is grateful to you for your appearing here and giving us the views of the organization for which you speak.

Thank you very much.

Mr. TAPLEE. Thank you, sir.

Senator ERVIN. The subcommittee's next scheduled hearing is June 6. We will take a recess until 10:30 in the morning.

(Whereupon, at 3:20 p.m., the hearing was adjourned, to reconvene at 10:30 a.m., Thursday, June 6, 1963.)

CIVIL RIGHTS COMMISSION

THURSDAY, JUNE 6, 1963

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess and subsequent postponement, at 2:10 p.m., in room 818, Old Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee), presiding.

Present: Senators Ervin and Kennedy.

Also present: William A. Creech, Chief Counsel.

Senator ERVIN. The subcommittee will come to order.

Counsel will call the first witness.

Mr. CREECH. Mr. Chairman, the first witness this afternoon is Dr. John Hannah, Chairman of the U.S. Commission on Civil Rights.

Dr. Hannah will be accompanied by Mr. Berl Bernhard, Staff Director of the Civil Rights Commission, and Mr. William Taylor, Assistant Staff Director.

Senator ERVIN. Dr. Hannah, the subcommittee is glad to have you with us. You have a written statement.

Dr. HANNAH. Yes, sir, Senator; if it is agreeable—it is not very long—I would like to read it.

Senator ERVIN. You may proceed.

STATEMENT OF DR. JOHN A. HANNAH, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS; ACCOMPANIED BY BERL I. BERNHARD, STAFF DIRECTOR, CIVIL RIGHTS COMMISSION; AND WILLIAM TAYLOR, ASSISTANT STAFF DIRECTOR, CIVIL RIGHTS COMMISSION

Dr. HANNAH. Mr. Chairman and members of the subcommittee:

I appreciate your invitation to add to the testimony already presented on behalf of the Commission my own views on legislation which would extend the life of the agency and revise its functions.

The testimony this committee has received from Commissioner Griswold and Mr. Bernhard fully states the reasons for a long-term extension of the Commission on Civil Rights and an amplification of its authority. I would add only a few personal reflections, based in part upon my experience during the past 5 years as Chairman of the Commission.

It is clear to me that we are in the midst of a revolutionary change in race relations in this Nation. When our Commission was established in 1957, the national policy of equal opportunity was already firmly embedded in the law. The principle had been eloquently

stated long ago in the Declaration of Independence, the Bill of Rights and the 14th amendment to the Constitution. It had been implemented in a series of judicial decisions, particularly the Supreme Court's opinions in *Brown v. Board of Education* and the cases following, which said without qualification that segregation in all aspects of public life violated the Constitution.

Yet, as the Commission was to learn in a series of investigations and hearings in all sections of the Nation, there was widespread disregard of these basic rights guaranteed by the Constitution. The Commission learned, too, in its hearings and investigations that the denial of equal opportunity had inflicted deep wounds upon the Negro community, wounds which were keenly felt by the great majority of its citizens. This last fact was perhaps not very apparent to most of the American public. There were, of course, a number of organizations of standing which had been working over the years to secure equal rights for Negro citizens, employing such traditional methods as litigation, legislation, political, and community action. But the deep discontent of the average Negro citizen had not manifested itself in the kind of overt action dramatic enough to compel our attention. Thus, it was possible for some people to conclude that the activities of the NAACP, the Urban League, and other organizations did not reflect any strong dissatisfaction on the part of the Negro community.

The events of recent weeks have shattered any such illusion. It is a measure of the desperation of the Negro people of Birmingham that they were willing to see their children go to jail in the hope that it would contribute to a better future for them. And the deep feelings of Birmingham have been echoed in demonstrations in North Carolina; Philadelphia; Jackson, Miss. and other cities all over the Nation.

These actions and the feelings which prompted them must be understood. Instead of being overly critical of leaders who now demand action, we should be grateful to American Negroes for their patience, forbearance, and tolerance over the long years of slow progress. Violence cannot be condoned, but we should understand why some feel that they are driven to it.

In this connection, I would ask those who plead and argue for a gradual alleviation of the Negro's miserable lot to put himself in the place of a Negro and ask himself how patient he would be if, 9 years after the Supreme Court's desegregation decision, he saw fewer than 8 percent of Negro children in the South attending integrated schools, and in Mississippi, South Carolina, and Alabama none; if he saw equal opportunities for employment denied to him; if he saw himself still without a vote 100 years after the Emancipation Proclamation; if he saw good housing denied him even if he could afford it; and if he saw his fellows receive a different kind of treatment by police officers than that accorded whites.

Philosophically, a slow tedious advance toward equality in education, employment, voting, housing, and justice may be best, but the individual Negro cannot afford to be that philosophical. He has but one lifetime; who can blame him for wanting to enjoy his rights within that lifetime?

The turmoil will continue. Out of it, I am sure there will come an end to many of the racial practices that violate our Constitution

and our consciences. In just 3 years, the sit-in movement, led by college students, has altered customs in more than 100 communities that had resisted change for more than a half century before. As the pace of the protest movement quickens, these barriers will continue to fall. But the effort to bring an end to overt practices of discrimination is only one part of the problem. If, when the current struggle is over, we have been driven into opposite camps and are left with a legacy of hate, fear, and mistrust, nobody will be the victor.

This, it seems to me, is the real danger. In many places, tensions are now so great and feelings so bitter that it is difficult to see how they can be alleviated. Binding up the Nation's wounds may well be a task almost as difficult as it was when Lincoln spoke of it almost a century ago. It is a job which challenges the resources and imagination of the Federal Government.

Thus, it would be a serious mistake, in my judgment, for the Congress to contemplate the elimination of any part of the civil rights machinery of the Federal Government. A public agency with a continuing responsibility for bringing to light the facts and making recommendations for corrective action is a necessity. By performing these duties responsibly, the agency helps to reduce tensions and to promote calm and reasonable solutions to civil rights problems. Beyond the fact-finding function, there is an even more pressing need for constructive action. As the President said in his civil rights message to Congress:

* * * there is an increasing need for expert guidance and assistance in devising workable programs for civil rights progress.

Solutions must be found at all levels of society by State and local governments, by industry and labor unions, by community and religious groups, as well as by the Federal Government.

No single agency or institution can hope to have all the answers. But it would be a contribution of immeasurable importance to vest in some agency of the Federal Government the function of collecting and making information available and of providing assistance and guidance to communities faced with civil rights problems.

I support the legislation introduced by Senator Hart, S. 1117, to accomplish this purpose by revising the authority of the Commission on Civil Rights. If, however, the Commission is to perform these new duties effectively, it should be placed on a more stable basis. The 4-year extension provided in S. 1117 would assure sufficient continuity for the Commission to plan its operations efficiently and effectively. But in my own judgment, a permanent extension of the agency is amply warranted by the facts. No one can foresee the day when the guarantees of our Constitution will be fully secured to all citizens, much less the time when prejudice and mistrust will be replaced by understanding and racial harmony. It would be a significant token of our maturity and resolve if we recognized this fact by establishing a permanent instrumentality for dealing with civil rights problems, rather than attempting to meet them on an ad hoc, crisis-by-crisis basis.

As long as there are still widespread denials of basic rights there will be a need to improve the enforcement procedures available to the Federal Government. But if in the long run we are seeking lasting solutions and better race relations, the constructive resources

of Government should also be put to work. S. 1117 would be a significant step toward that goal. In my view, service on the Civil Rights Commission is not an assignment to be sought for.

The members of the Commission have devoted much time, thought, and energy to the work of the Commission, and I feel the Commission has performed a service that is in the longtime best interests of our country.

The Commission has now a competent, dedicated, and able staff and staff director. It is very difficult to recruit and hold such a staff when the authorization expires at the end of each 2-year period. Those that have demonstrated unusual abilities are sought by other employers, and the temptation to leave the Commission is very great. It will be a misfortune if action is delayed, and again the staff is practically dispersed before it is given a new lease of life.

After almost 6 years as Chairman of the Commission on Civil Rights, I am convinced that the problem of civil rights in America is our most important single problem, and it is important because of its effect on domestic tranquility within our country, and important because of the effect it has on the regard in which our Nation is held by the peoples of the world.

The problem will not go away; it must be faced up to and worked at by people of good will who are in fact the majority of all the citizens of our country.

Mr. Chairman, if there is time, I would like to read into the record some extracts from the final chapter and concluding statement in our report of 1961.

It outlines important points that are often overlooked in dealing with this important and difficult problem, but if there is not time and you wish to proceed with the questioning, I can give the sections that I would like to have inserted, to the reporter.

Senator ERVIN. Dr. Hannah, there is time, and we would be glad to have you call our attention to any sections of the report that you desire, and I might add at this time, Senator Hart was desirous of being here and presenting you to the subcommittee, and he asked me to express his regrets to you, but he was unfortunately detained on the Senate floor and could not be here.

Dr. HANNAH. Thank you very much, Senator.

I will read these few paragraphs, and I am reading this from the document, the excerpts of the 1961 U.S. Commission on Civil Rights report, beginning on page 95:

The Commission's studies indicate that civil rights problems occur in complex settings from which they cannot readily be isolated. Discrimination in one context is apt to be interlinked with discrimination in other contexts. Inferior schooling, for example, makes it difficult for Negroes in some areas to achieve the vote—and, combined with restriction to menial jobs, makes it difficult for them to assert other rights. Similarly, there can be no doubt that inequalities in educational opportunity necessarily produce inequality of employment opportunity; and, to complete the circle, a choice of careers that is restricted by discrimination undercuts the hope that might lead the minority group youth to pursue his education to the full extent of his capabilities. It is also clear that racial restrictions in the housing market help to produce segregation in the schools, and that this in turn generally means inferior schools for minority group children. Discrimination in housing also often limits the choice of employment for its victims.

* * * * *

These relationships suggest that no single, limited approach will bring an end to discrimination. While attention to one civil rights problem at a time may achieve substantial progress, simultaneous action on many fronts is far more promising. Thus the Commission's studies of southern black belt counties suggest that assuring the right to vote, fundamental as that is, will not quickly assure equal protection of the laws in other aspects of the Negroes' life. Similarly the opening of new career opportunities to a particular minority will be of little use if its members have had no opportunity or reason to prepare themselves for such careers—or if they are barred from living near the new place of work.

The need for broader action is underlined by the fact that problems of discrimination are often intimately related to other problems. For example, the slums that blight our urban areas pose problems of major concern to a nation whose future lies increasingly in the cities. Urban renewal is not in itself a civil rights problem, yet discrimination—in housing, in education, and in employment—contributes in major degree to the creation and preservation of the slums. If they are to be abolished, discrimination will also have to go. Metropolitan planning, health, welfare, recreation, transportation, and related programs not primarily concerned with civil rights objectives may fail if they do not deal with questions of discrimination as well.

The close relationship of civil rights to other areas of public concern may also mean that measures not directly aimed at discrimination may be helpful in eliminating it. The Commission's black belt study, for example, strongly suggests that economic measures to expedite transition from a one-crop agricultural economy to agricultural diversity and industry may ultimately do more than lawsuits to improve the economic, political, and legal status of black belt Negroes. Measures to broaden economic and educational opportunities for all may help solve civil rights problems throughout the Nation.

In short a variety of approaches are needed. The methods that are most suitable may vary from place to place. The southern rural black belt, for instance, is generations as well as miles apart from the northern cities where the Nation's minority population is now concentrating. In both places there are serious deprivations of civil rights, but they are manifested in different ways, and against different social, political, and economic backgrounds; the remedies may not be entirely interchangeable. In all circumstances, however, action of many sorts by many agencies—private, local, State, and Federal—is needed.

In accordance with its statutory duty this Commission has focused principally on the role of the Federal Government. The latter does not and, in the Commission's views, should not bear exclusive or even initial responsibility for the achievement of equal opportunity for all. Nonetheless, it bears a heavy responsibility, and one that—despite great strides in recent years—it has not yet discharged. Accordingly, the Commission has made a number of recommendations for Federal action, but these by no means exhaust the needs or possibilities for improvement.

* * * * *

With regard to remedial measures intended to achieve the objective of non-discrimination, the Commission has made recommendations for three kinds of action. It has recommended invoking the power of the law to enforce the requirements of the Constitution: by new statutory requirements and by measures to facilitate enforcement of existing law. In proposing such action the Commission is not expressing a special confidence in punitive sanctions, but in the creative and instructive role that law can play—and has played—in American society.

A number of recommendations have also been made regarding the use of public money. These are based on the principle recently stressed by President Kennedy that "Federal money should not be spent in any way which encourages discrimination, but rather * * * (to encourage) the national goal of equal opportunity." On the one hand, the Commission has suggested in several instances that Federal financial support should be withheld from programs which are so administered as to discriminate on racial grounds. On the other hand, it has repeatedly recommended augmentation of existing programs, or establishment of new ones, to expand the opportunities of all citizens in education, job placement, vocational training, and housing.

Finally, the Commission has made several recommendations calling for the exertion of leadership by the President and others in the National Govern-

ment; and it reiterates the need and worth of such leadership in the general recommendation that follows. These recommendations are based on the belief that the Presidency, and indeed the whole Federal Establishment, is preeminently a place for moral leadership. The Commission has been impressed with the influence which those in responsible positions can exert on the civil rights climate of the Nation. By using the instruments for education and persuasion which are available to them they can stir the conscience of the country. By the example of their own conduct they can exert an influence far beyond the immediate occasion.

Of course the need for forceful, enlightened leadership is not confined to the Federal Government. At every level of civic life—from the President down through mayors and police chiefs to school boards; from the chairman of the board to the shop superintendent; among religious leaders, union officials, and journalists—leadership plays a vital role in making clear the legal and moral obligations of the citizens of a democracy. Where such leadership is lacking there has been little progress—and sometimes regression to violence. Where it is present, there is no challenge that cannot be met.

That concludes the statement, sir.

Senator ERVIN. Dr. Hannah, I assume you would agree with me that Americans who happen to belong to the Caucasian race have some very precious rights themselves, do you not?

Dr. HANNAH. Yes, sir.

Senator ERVIN. It has always been a principle of law that as Judge Harlan stated in his dissent to *Peterson v. City of Greenville*:

An individual's right to restrict the use of his property however unregenerative a particular exercise of that right may be thought lies beyond the reach of the 14th amendment.

Now, of course, the 14th amendment does not apply to the District of Columbia, but your Commission has made certain recommendations concerning housing in the District of Columbia which would, if carried into effect, severely restrict what Judge Harlan calls the individual's right to restrict the use of his property, would it not?

Dr. HANNAH. I presume so, sir. I should like to comment, Mr. Chairman, that I am not an attorney. We have on the Commission now three distinguished attorneys, one of them the former president of the American Bar Association and dean of the Southern Methodist University Law School; one of them the distinguished dean of the Law School at Harvard; one the dean of the Law School at Howard.

In the 5 years all together, at times there have been three additional lawyers on the Commission, Dean Johnson of Howard who is now the vice chancellor of the University of Nigeria, Governor Carlton of Florida, and Governor Battle of Virginia, and all of these matters that bear on what is legal or judicial or constitutional, have been adequately discussed by them.

As a nonlawyer I have been heavily persuaded by their comments, and so if we are going to talk about what is legal and what is based on judicial action, I don't pretend to be an expert in that area.

Senator ERVIN. I didn't intend to ask you questions dealing with legal principles except to call attention to a fact you probably know, that is at the present time in the District of Columbia the owner of property can sell his property to whomsoever he pleases, and can lease it to whomsoever he pleases.

Isn't this your impression of the law as it applies to the District?

Dr. HANNAH. Yes. There have been certain recommendations made by the Commission with reference to the sale of property other than single residential dwellings.

Senator ERVIN. My question is this: Are you of the opinion that adequate housing for Negroes cannot be effected without depriving all Americans, both white and colored, of the right to deal with their own property as they see fit insofar as the use of that property and the leasing of that property and the sale of that property is concerned?

Dr. HANNAH. No, I don't believe so, Senator. I agree wholly with the position taken by the Commission that it is appropriate that the individual owning a house in which he lives, a single occupancy dwelling, should have a right to determine to whom he should sell it.

When he lists it, however, with a real estate agency, it is felt that at this point it is appropriate for governmental agencies to restrict the practicing of discrimination by brokers and agents, and so on.

Senator ERVIN. Well, Dr. Hannah, as I understand one of these recommendations, the owner of a one-family house would be allowed to retain his present right to sell that house himself, but if he saw fit to employ a realtor to sell it, he could not instruct that realtor as to whether he had any preference as to the race of possible purchasers.

Dr. HANNAH. It has been some time since I read over these recommendations with reference to housing in the District.

It is my impression, however, Senator, that we called this matter to the attention of the Board of Commissioners of the District, and suggested that this was a matter that they should give consideration to.

I don't believe that it was the Commission's intent to tell them exactly how they should handle this problem.

I would like to ask Mr. Bernhard, who is more familiar with the recommendations, to comment, if it is agreeable to you, Senator.

Senator ERVIN. Yes.

Mr. BERNHARD. Mr. Chairman, the recommendation is to the effect that the District of Columbia Board of Commissioners should consider issuing and effectively implementing a fair housing ordinance in the District.

The Commission left open the question whether or not it could cover single-family dwellings, and whether or not brokers would be covered by it would depend on whether or not the Commissioners determined that single-family units should be involved.

Senator ERVIN. But didn't the Commission recommend that the District Commissioners adopt an ordinance depriving the owner even of the one-family residence of this power to instruct a sales agent with reference to his preference to sell his home to a member of a particular race?

Mr. BERNHARD. The Commission recommended that should the District of Columbia Board of Commissioners determine that single-family dwellings should be covered by such an order, then anybody who attempted to use the services of a broker or who might list his family unit on a discriminatory basis for newspaper advertising, for example, would be covered.

As to the question of whether this constitutes restriction on the private use of property, I think that may be true, but the real issue here it seems to me is a question of free choice and whose choice.

Senator ERVIN. No, it is a question of free choice on one side and no free choice on the other.

Mr. BERNHARD. It is free choice all around to open up the opportunities for those who are purchasing homes.

Senator ERVIN. Oh, no.

In other words, your recommendation, if carried out, would deny one person any free choice at all.

Mr. BERNHARD. In terms of selling but not in terms of acquiring.

Senator ERVIN. And would give a free choice to the others. You would give a choice to a member of the minority race to demand that the other man surrender his rights.

Mr. BERNHARD. No.

Senator ERVIN. Oh, yes.

Mr. BERNHARD. I think the choice here, as I see it, would be a choice of acquiring property. Everybody would be able to acquire property regardless of his race, religion, ancestry, affluence of his parents, or anything else.

There may be restrictions in your ability to sell it based on artificial restrictions, but not in acquiring property, and that is the real issue, whether or not Negro citizens can acquire property in the District.

Senator ERVIN. You are asking for an ordinance to prevent discrimination in the leasing and the sale of housing.

Mr. BERNHARD. That is correct.

Senator ERVIN. Well, wouldn't that ordinance contemplate that the Government would take over and control and, in effect, supervise the rental of apartments?

Mr. BERNHARD. Not at all.

Senator ERVIN. And reserve the right to tell the owner of the apartment to whom he could rent?

Mr. BERNHARD. No; I would think the burden of proof would always rest with the person who tried to establish that he had been discriminated against.

Senator ERVIN. Yes; but if he established the burden of proof, wouldn't the Government then have the right to step in and say to the apartment owner, who might want to rent an apartment in his building to a member of the Caucasian race, that he had to rent to a colored man?

Mr. BERNHARD. If he refused to do so and this were covered by the ordinance, that is correct.

Senator ERVIN. You keep talking about being covered by the ordinance. I am talking as if your recommendation were put in the form of an ordinance.

Mr. BERNHARD. That is right; that is true.

Senator ERVIN. That doesn't leave the owner of the apartment house such a choice, does it?

Mr. BERNHARD. That is correct.

Senator ERVIN. It robs one man of freedom of choice and gives all of the choice to the other, doesn't it?

Mr. BERNHARD. Mr. Chairman, may I just say that this isn't so unique. There are cities and States that already have the ordinance. There are restrictions on private property through the antitrust laws, the Food and Drug Act, the fair wages law, hour and wages law.

There are zoning restrictions, fire regulations, and building restrictions.

Senator ERVIN. You don't see any difference between the law forbidding somebody from selling me impure food and a law which

takes away from me the right to use my own property in my own way?

Mr. BERNHARD. Only to the extent that I think that the protections of individuals are just as important as the protection of property rights that you are referring to.

I think they are all part—

Senator ERVIN. You think those two laws of that nature are synonymous.

Mr. BERNHARD. Yes.

Senator ERVIN. Dr. Hannah, do you believe that it is possible to settle racial problems without robbing members of the Caucasian race of their rights?

Dr. HANNAH. Of course the answer to the question depends upon your interpretation of what these Caucasian rights are.

I think that it is possible to assure fair and equitable treatment and the elimination of unreasonable discrimination, without depriving Caucasians unreasonably.

Senator ERVIN. Do you believe that a man, whatever his race, is evil if he prefers to have his place of residence in a community which is inhabited by members of his own race rather than a mixed neighborhood?

Dr. HANNAH. No, sir. I think he is entitled to have such choices as he wishes, and it is not my concept that there is anything that has been recommended by the Commission on Civil Rights that would deprive people of the opportunity to buy real estate or homes wherever they care to.

What the recommended civil rights legislation would try to do is assure an opportunity for members of minority groups also, if they can afford it, to buy and live in the kind of homes and in the kind of communities in which they would like to live.

It seems to me, after having spent a great many hours and days thinking about this problem—and I should say, Senator, that when I accepted this appointment from President Eisenhower 6 years ago, I didn't know very much about civil rights, but I have spent a lot of time worrying about it since—I am convinced that eventually you have to get some rationale, and that if we are about.

So far as I am concerned, I can summarize it very simply. I think that we have to come to a situation where every young person, regardless of his color or race, must have an opportunity for all of the education that he can make use of and wants, and it must be of good quality. He shouldn't be deprived of a quality educational opportunity or of any opportunity, because of his color or any such artificiality.

Now, once he has acquired this education, clear to the top if he wants it, through a graduate school or a professional school, so that he can make a useful social contribution, then he should not be deprived of an opportunity for employment that will make use of this skill.

It is in the national interest that he shall have an opportunity for a job, and not be discriminated against because of his color.

Now once he has the job that he is able to secure when he shows that in fair competition he can do it as well as anyone else, then he must have an opportunity to enjoy the same rewards as a result of his social contribution that all other people have. Just because

he is black or belongs to some other religion than the majority, he shouldn't be deprived of the opportunity to live in a decent house in a decent community, if that is where he wants to live.

Now if he wants to live in a slum and in a congested area, of course, he should have that opportunity, too.

So far as I am concerned, this reduces my basic philosophy to its elements.

The problem in the country at this moment is that we have a very large number of bright young Negroes who have had reasonable education and who no longer have much patience for those who say "let's move gradually, let's not upset people, let's not foment commotion, let's take it in an orderly fashion."

As I said in my written statement, this is reasonable, if you are looking at longtime history.

But for the individual who has only a single life to live, it is not unreasonable in my view for him to feel that the time is now, "I only live once and I should have the opportunity for the education, for the job, for an opportunity to live in a decent house in a decent community, if I want to, an opportunity for the education of my children, an opportunity for the same kind of treatment from governmental agencies, police force, and so on, that other people have," and that is all there is to it.

Senator ERVIN. Doctor Hannah, I must confess that I can't quarrel with you on your statement; I would like to see all those things come to pass myself.

But the point that I am trying to make is: Can't somebody come up with an idea, for example, that a member of the minority race can buy an adequate house without compelling the other man to sell him his house?

Dr. HANNAH. If we can, sir, certainly I would have no objection to that procedure, because I have stated what my basic philosophy is, and I am sure this is the basic philosophy of these commissioners and those that have preceded them on the Commission.

Senator ERVIN. But my trouble is with the recommendations of the Commission, and I can't reconcile the recommendations with respect to housing, for example, with the retention by the property owner of the right to control the use of his own property and the sale of his own property.

In other words, the reason I can't rationalize in my own mind the consistency between the recommendations of this kind and the American system is that the theory apparently of many people today is that you cannot procure adequate housing for a member of a minority race without the Government stepping in and, in one form or another, depriving all Americans of their right to dispose of their own property to any person to whom they may desire to dispose of it, and to lease it to any person to whom they desire to lease.

In other words, one of those rights, in my mind, is just as precious as the other, and I do not think that it is compatible with our system to take and destroy one man's right in order to give a right to another.

Dr. HANNAH. I am not going to argue with the basic concept that you have just expressed in the last sentence, if there are other ways to achieve the objectives. It is the objectives that are important, not the specific recommendations or specific words. As a

matter of fact in many cities in this country where there are substantial populations of minority groups, restrictive covenants in real estate deeds that were written when the property was originally subdivided, make it impossible, or practically impossible, for Negroes to buy a decent home in a decent community.

And if as I believe this whole civil rights problem is interrelated, one aspect of it is there must be an opportunity for the Negro who can afford it and is a decent fellow and wants to live a decent life to live in a decent community. If the only way you can accomplish this is to make certain that when the owner decides to sell his property, he is not free to discriminate. If he is going to sell it himself he can have complete freedom in whom he sells it to, but not when he is going to sell it through a broker or a real estate agent.

Now this means, of course, that if I am in the kind of a community that you say you would like to live in, I have a right to hold my own house as long as I live there.

But the next door neighbor, if he sells it himself he can restrict it as he wants to, but if he sells it through a broker or a real estate agent, and an honorable decent Negro comes along that can afford to pay for it, this person will have the opportunity to buy it, and I would have to look for another place somewhere else and the same thing might happen.

Senator ERVIN. You say it has been a long time since you read the recommendations. Of course, I can understand that if the human mind retained everything we would be in a terrible fix.

But what would be the situation in your opinion, under the recommendation, if the owner of the property listed his property for sale with a real estate agent in the District of Columbia, and he happened to be in a neighborhood occupied by members of the Caucasian race, and the real estate agent entertained the opinion that a sale to a Negro would result in a decrease in value, and a Negro and a member of the Caucasian race both offered to pay the same price for it, and the real estate agent sold it to the member of the Caucasian race.

Now, would that real estate agent under those circumstances be guilty of discrimination?

Dr. HANNAH. Again, I am not a lawyer. I feel that commonsense should always prevail. It would be necessary for the person denied the purchase to be able to demonstrate that there was in fact discrimination, and this might be difficult to prove.

Senator ERVIN. I have given the facts in this hypothetical case. If you had to make that decision what would be your decision?

Dr. HANNAH. My decision would be that the person denied the purchase would have to be able to demonstrate that there had in fact been discrimination.

Obviously, if there were two offers at an equal price, this would be very difficult to demonstrate.

I might defer to the attorney on my right who might have a different answer.

Senator ERVIN. Yes, I would be glad to have his opinion on that.

Mr. BERNHARD. Well, I would say before I try to answer it directly that I would hope that it is purely a hypothetical question, because from our own studies we have found that short of the block-busting techniques and panic-inducing activities employed by

some I think, unfortunate groups, of real estate operators in some places, the fact of the matter is that there is no automatic relationship between the entrance of a Negro into an all white or a predominantly all white neighborhood and declining property values.

Senator ERVIN. You are arguing a point that is highly in controversy.

Mr. BERNHARD. I understand that, but I think the factual material we have in hand indicates this doesn't necessarily happen and Mr. Schwulst of the Bowery Savings Bank of New York says this is a self-fulfilling prophecy, that it only happens when the real estate agent says it will happen and—

Senator ERVIN. My question wasn't that. It was about the real estate agent who did honestly entertain that opinion.

Mr. BERNHARD. If he entertained that opinion and the results of that opinion were that he translated it into denying the Negro the opportunity to purchase that home, and the facts could show that he did this because of a racial factor, I think he would be in violation—

Senator ERVIN. Wait a minute, now you are bringing in some other things.

You said he would have to show. I have given you the circumstances and you have to draw an inference from them.

I have been trying to get an answer to this question ever since these hearings started, because I don't understand exactly what they mean by discrimination and what decision is going to be made when the facts are of that nature.

Mr. BERNHARD. Let me see if I can restate it because I think it warrants a direct answer.

I think if the facts are that in a particular neighborhood which was an all white neighborhood an individual sought to sell his home and used a broker and a Negro came as one of two purchasers and it was the feeling of the real estate man that property values would decline if he sold it to this Negro and therefore refused to do it and he sold to the white purchaser—is that an accurate statement?

Senator ERVIN. That is an accurate statement. Yes.

Mr. BERNHARD. The burden would then be on the Negro to prove that he had been denied that property because of his race.

Senator ERVIN. I have given you all the evidence available, and if you had to pass judgment on it, you were the agent that had the authority to pass the judgment on it, what would your decision be?

Mr. BERNHARD. I would have to know more facts.

Senator ERVIN. There are no more.

Mr. BERNHARD. I would have a difficult time coming to a firm conclusion on that one, I am afraid.

If I were the Administrator, to make that decision I would have to know that there was sufficient factual basis to show that there was discrimination, or the Negro's complaint would be dismissed.

Dr. HANNAH. Senator, I can't give you the legal answer, but it is my feeling when we are talking about discrimination we should actually mean what we say, and it shouldn't be discrimination for or against.

On the facts as you outlined them, if these are all the facts, you would have great difficulty in convincing me that there was discrimination, if this is all there is to it.

But this is just a commonsense answer, not a judicial one.

Senator ERVIN. I should like to mention some statistics from the District of Columbia and ask you what they indicate to your mind.

In 1930, the number of white residents in the District of Columbia was 351,981, and the nonwhites were 131,888.

In 1940, the whites had increased to 474,326, and the nonwhites were 188,765.

Then the population of the District of both the whites and nonwhites continued to increase until 1950 when they had 517,865 whites and 284,313 nonwhites.

Then in the meantime the school desegregation decision came down, and in the 1960 census the number of whites was 345,263 and the number of nonwhites 418,693, showing the while there had been an increase of the number of white residents constantly from 1930 to 1950, that from 1950 there was a decrease of 172,602.

What would you infer as to that?

Dr. HANNAH. Well, sir, as I understand the facts of the situation in the metropolitan District of Washington, these are essentially the facts.

I didn't write down all your figures but these are the trends of the census from 1930 to 1960.

But if you take the whole metropolitan district, taking the city of Washington and its suburbs, there has not been a very substantial change in the percentage of whites and Negroes.

The Negroes have pretty generally been denied the opportunity to live in the suburbs, and so naturally they have concentrated themselves in the District, and as I recall the studies that were made by our Commission staff, these were the facts.

So all that this indicates to me is that the percentage of Negroes in this metropolitan district is not very different from the percentage in other Northern cities which reflects, of course, in general the trend of the Negroes in the South to move into the big metropolitan cities of the North, and since they have been denied the right to live in the suburbs they have been greatly concentrated within the District, which complicates the problems within the District.

Senator ERVIN. Doctor, isn't that a condition that exists in all or in virtually all of our larger cities?

In other words, do not these figures indicate that a substantial portion of the members of the Caucasian race desire to live in localities inhabited by other members of that race?

Dr. HANNAH. It may well be.

Certainly the trend has been that the whites in the big cities move into the suburbs and the space that they leave has been filled up with Negroes. And, of course, there is no argument about the fact that a very large fraction of the total civil rights problem in this country is the problem of assuring civil rights for these increasing Negro populations in the deteriorating cores of the old city.

No one connected with the Civil Rights Commission has indicated that this was a problem that was centralized in the Old South, and we have stated over and over and over again that this is not a problem that is confined to any single area of the country.

It is a different kind of a problem, but it is a very real one, one of the most disturbing things that has been written, Senator, and I am sure your staff is familiar with it, is this study of Dr. Conant's, the long time president of Harvard, entitled "Shuns and Suburbs." If you

want to be disturbed and not sleep well at night you should read his review of what is happening in the slums, in the cores of some of these great Northern cities, where there are thousands and thousands of young Negroes out of school and out of work. Here you have the potential for very serious problems that we need to be concerned with.

Senator ERVIN. Doctor, I am very much concerned about it. But another thing concerns me though. I read all of the hearings that the Commission conducted in the District of Columbia with respect to the housing problem, and to be perfectly frank about it, among most of the witnesses there, I found no very substantial feeling that they were concerned as much about obtaining adequate housing for members of the minority race in the District of Columbia, as about devising some method by which they could overcome, either by persuasion or by governmental coercion, the apparent desire of members of the Caucasian race to live in communities inhabited by people of their own race, and that is what worries me. I think this is a serious matter in this field.

It seems to me that they ought to try to remove slum conditions where the slum conditions are, and establish housing, adequate housing for members of the minority race without attempting or devising methods which would deprive the other people of the right to live in areas inhabited by members of their own race.

Dr. HANNAN. Senator, this is not in answer to your objection to the questioning of witnesses at that hearing. But I should like to point out that where a great Southern city—I am talking about Atlanta—some years ago became seriously concerned with this problem and set out to provide an opportunity for advantaged communities for the Negro citizens that wanted to live in an advantaged community.

And you are familiar with what they did. They took a pie shaped piece of the city of Atlanta and, of course, they were opposed to the idea of Negroes and whites living side-by-side but they said to the whites in the housing in this area, "We are going to open this area up to Negroes, and if you don't like it why you had better move out while you can," or something of that sort. But the key question arose, of course, because when they got through they had this very unhappy slum section called Buttermilk Bottom in the downtown area. But they went clear out to the suburbs and opened up a sizable new area so it became possible for a Negro citizen to buy a lot and build his own house if he wanted to in a middle-class area, or to buy a lot and build a very expensive house in a very fine area. You will find in the city of Atlanta some magnificent housing areas that are occupied by Negroes. They have fine homes and fine streets and fine schools and they behave very well indeed.

You don't get a great deal of unhappiness in Atlanta with the situation. But where you find a situation where another city, either south or north, does nothing about it at all, just intends to live with the restrictive covenants of all kinds that are in real estate titles, they say, "We are not worried about this," then you bring about a situation where it is impossible for a Negro to build a house of his own.

In the first place, he can't get a lot in a middle-class or in a high-class area. There are no lots open to him. The only place he can buy a house is in the old areas downtown where the whites are willing to move out, and it is the only area in our society where the Negro's money isn't as good as the white's.

He may have the money, may be perfectly decent, a doctor, lawyer, a distinguished citizen, nothing wrong with him at all, but the only place he can find a house is in this congested area downtown.

And then because it isn't big enough and the population increases, you get these people crammed together three or four or five or six times as thick as the white people were when they occupied the area, and, of course, the schools are the old schools, and many of these Negroes coming in have not had much in the way of education, and if there is anything that is clear to me, and I am sure it is to you, in our society in 1963, there is less and less market for the employee who has nothing to sell but a strong back and a strong arm and a willingness to do what he is told.

You will find in Detroit, in Michigan, with which I am very familiar, thousands of people who are unemployed and they are going to stay unemployed because they haven't a skill for which there is a demand.

Senator ERVIN. I think, Doctor, that is one of our serious problems, because we have had so much automation, and there are so many jobs that unskilled labor used to do.

Dr. HANNAH. But at the same time in the newspapers in these cities there are pages of advertisements seeking people who can run computers and who have many kinds of skills, and at the present time the market for skilled Negroes is very high.

The employer who really wants to hire Negroes with high skills find it is very, very difficult because they haven't had this kind of training.

But we come back to this old core. Of course, you cram these people into poor housing, and many of them are disenchanted and have little incentive for education, and these youngsters are out of work and out of a job and the future doesn't hold much for them, and then they behave badly.

And so then white people say whenever you talk about providing an opportunity for the Negro who is educated, "What do you expect, look at the way these people behave. Read about the rape cases and all the juvenile delinquency, and so on."

Well, it is the old case of which comes first, the hen or the egg.

That is why you have got to attack this problem across the board. One part of it is that we have got to provide an opportunity for the Negro who has an education and is decent and able to make a useful contribution to society. He has got to have an opportunity for a decent house in a decent community, if he wants it.

Now there may be many ways of arriving at it but this is essentially the problem.

Senator ERVIN. The theory of some people apparently very active in this field is that you can't get adequate housing for Negroes without depriving all Americans of basic property rights. Similarly in regard to employment, I would think that if I were in business—this is hypothetical because I haven't got any money to go into business, but if I did I ought to be allowed to select whom I am to employ, to promote, and to discharge.

But those who advocate many of these so-called civil rights bills want the Government to take charge of determining whom the people shall employ, whom they shall promote, and whom they shall fire. In an effort to get a very valuable and a very precious right for one

person or a group of people, you rob other people of rights that are equally as precious.

That is my quarrel with all of these civil rights bills of modern vintage, every one of them. They are bills based upon a very tragic theory, I think, that the only way to secure a more abundant life for Negroes is to rob all Americans of a very precious economic and personal right.

Dr. HANNAH. Again, I don't want to argue the case at all. I think we have to recognize that in the United States there are—and I have forgotten the exact number—18 to 20 million Negroes. There are all kinds of people, and many of them very able people.

I think the one resource that no democratic society can deny is the potential of its good people, particularly the potential of its good young people, and we either believe in the basic concept of equality or we don't, and any inequality that is based only on color or religion is pretty hard to justify in my eyes.

We live in the world as it is. It may not be the kind of a world some people would prefer to live in, but this is it. I think we have got to put ourselves sometimes in the position of the Negro.

My ancestors are Scotch-Irish. This fact hasn't been thrown at me all of my life. But what if every time I had tried to move forward or get a job or go into a restaurant or somewhere else I had been rebuffed because people said "they are Scotch-Irish, what do you expect; they are an inferior lot of people; they shouldn't have these opportunities."

The Negro, however, alone or almost alone in our society, can't change the color of his skin or the kinkiness of his hair, and he has the greatest difficulty being considered as an individual. Somehow or other you have got to put into our system a situation where the man who happens to be black, if he is qualified and decent and respectable is entitled to an opportunity to be recognized for what he is.

Basically, the problem of civil rights in this country is that so far we haven't put into our society the situation where the person of a different colored skin is accepted for what he is.

We want to say "you are black, you are a Negro, look at the way the Negroes behave in the less-advantaged community."

This is a great handicap that somehow we have got to take out of our society and we have got to take it out now.

Senator ERVIN. Of course, all other men immigrated to this country. The Scotch-Irish didn't have any bed of roses when they first came.

Dr. HANNAH. That is right.

Senator ERVIN. Most of them came into a wilderness. Then you had other generations of immigrants. You had the Germans and Italians, Irish, and all of them found that the American system was sufficient to give them their rights as Americans without setting up any particular system wherein the Government acted as guardian for them.

Dr. HANNAH. Yes, but there is one fundamental difference, Senator. These waves of immigrants, disadvantaged immigrants from Europe, including the Irish that came over in the great famines and the Germans and later the Polish and the Italians and the south Europeans and the Greeks, and so on, they sometimes lived segregated for a generation, but they had an opportunity to go to school, and the youngsters dispersed.

They went out into society and they could gain jobs and they disappeared. And to a degree this is even happening with some of our Latin Americans, the Mexicans and to a lesser degree the Puerto Ricans.

This is the difference that the Negro can't overcome. He just can't get out and be recognized for what he is because of the color of his skin in too many instances.

This is the fundamental difference. We have got to recognize that he has a handicap that the Irish and the Germans and the Polish didn't have.

Of course, I can remember in my lifetime and you can too, sir, although the situation in North Carolina may have been different than it was in Michigan when I was a youngster the Polish were called Polacks and the Italians were called Wops and the Greeks were kind of looked down on by people.

But that has all disappeared.

The next generations have dispersed and they are fine citizens, and somehow or other we have got to do the same thing with the Negro people.

This is the basic problem.

Senator ERVIN. The thing that bothers me, Dr. Hannah, above all things, is that here is a system of Government which has existed, which has given us the maximum liberty, the maximum of economic liberty, the maximum of personal liberty, the maximum of political liberty, and the thing that I see in all these civil rights bills is that we are going to destroy all this liberty in order to bring about the equality of the races.

In other words, it is a war between liberty on the one hand as I see it, and equality on the other.

That was very well pointed out by Justice Harlan in his recent dissenting opinion.

I just think that the Supreme Court of the United States put its finger squarely on this whole issue when it said in the *Civil Rights* cases that the Negro race should at sometime cease to be the special favorite of the laws. They should have their rights adjudicated by the same laws by which all other men's rights are adjudicated.

All of these civil rights bills and recommendations of your Commission are recommendations that certain groups of Americans be singled out on account of their race, and be given rights superior to those ever sought by or given to any other groups of Americans in our history.

Dr. HANNAH. I would like to refer this question to Mr. Bernhard.

Mr. Chairman, if Negroes and other minority groups are given the same opportunity and the same treatment as far as voting privileges are concerned, educational opportunities, jobs, opportunity for housing, opportunity to live in decent communities, and so on, the same treatment by police offices and all agencies of the Government, I see no reason why they should be given preferential treatment in the courts.

They aren't going to need it.

But so long as we deny them these opportunities, the opportunity for education and jobs, and decent houses, and for equitable treatment, in some places even an opportunity to vote, then until we change that situation, may be they are going to have to have preferential treatment.

MR. BERNHARD. Mr. Chairman, from some of the comments I have made, and some of your reactions, I think you may have some reason to believe that I have some questions about free enterprise and the capitalistic system.

Now these officers are concerned with the enforcement of State laws against citizens of the State as a rule, and also within the portals of the State, and are certainly subject to the supervision of the State courts.

It seems to me that that recommendation is fraught with the possibility of great injury to law enforcement on the State level. Also, it is a rather bad thing from a Federal-State standpoint, because if Congress were to take that recommendation and make it a Federal crime for a State officer to use excess force, it would place every State officer when he undertook to make an arrest and was met by force in this kind of a dilemma:

If in the exigencies of the moment he was conscious of this law, and in order to avoid violating it he underestimated the degree of force necessary to effect the arrest to prevent the escape, then the probability is that the alleged criminal would escape or beat the officer, or in some cases even murder the officer. On the other hand, if the officer made a mistake in the heat of the moment and used more force than was necessary, then he is subject to prosecution in the Federal courts by the Federal Government, allied on the side of the party from whom he was trying to protect society.

I happen to be a strong believer in that, and I believe even more strongly that products should be accepted or rejected because of their inherent value. And this is why it seems to me we have laws which prevent artificial restrictions in the economy, why we have antitrust laws, why we prevent unlawful mergers, because these restrictions allow some products not to be accepted on their inherent worth but because they have a power position or monopoly position which makes inferior products accepted at higher cost.

It seems to me this is the same thing regarding persons, that we should remove all those restrictions which make it impossible for people to be accepted or rejected because of their inherent value.

I think the lower rungs of society should be open as well to those who don't have it, whether they are white or black, as well as the higher rungs of society.

This is my whole philosophy on it.

SENATOR ENVIN. The way I see this thing is, are we going to sacrifice the liberty of all Americans in order to give what is in effect special Government guardianship to certain groups of Americans?

DOCTOR. You spoke about law enforcement. Your Commission made one recommendation that gives me, as a lawyer concerned with administration of justice, considerable misgivings. That is the recommendation that Congress pass a law making it a Federal crime for a State law enforcement officer to use excess force and unnecessary force in making an arrest or retaining a person in custody.

Don't you have any misgivings about making all State officers perform all of their duties under the possibility that they would be haled into the Federal court as a criminal under those circumstances?

DR. HANNAH. Mr. Chairman, I should expect and hope, of course, with this kind of Federal legislation that its enforcement would be intelligent.

Everyone recognizes that police officers must be given protection. They have a very difficult task and a hazardous task to perform.

We have at the university that I am connected with, I think the most effective police administration program in this country. We have been at it for 35 years, and this whole matter of police officers has been a matter of concern.

So I start on the same point you do that the police officer is entitled to protection. You give him a very hazardous job to perform.

But the other side of the coin is that in some places in the United States Negroes are treated quite differently than whites. They are picked up and searched and sometimes beaten and thrown into jail and in some cases even killed, whereas if they were white people they wouldn't be.

There isn't any question and I am satisfied that they wouldn't treat me like they treat some of these people, just because they happen to be Negroes.

Somehow or other we have got to put into our system adequate protection for the police officer, all that he deserves. He should be protected from charges of unreasonable enforcement because one Negro brings a complaint that he was unfairly treated.

The burden of proof is going to have to be on the complainant. I should hope that this is in fact the case.

The present situation is intolerable in many places in the United States, and I am not in this case talking about the South alone.

It is true in some places in the South and it is certainly true in some of our northern cities that there is an entirely different level of justice meted out to Negroes.

Senator ERVIN, Doctor, this statute is not confined to use of unnecessary force on Negroes. It applies to every criminal that is arrested, and it has always been the policy in this country to leave the prosecution of assaults and batteries to the States, no matter how aggravated they might be.

Here is a recommendation which would certainly make any man, any time he used any force whatever to effect arrest, subject to the possibility that he would be haled before a Federal court.

I think it is a disastrous kind of thing. You have a statute now that if an officer commits an assault or uses excessive force on any person because of his race, for the purpose of depriving him of any right guaranteed by the Constitution or the laws of the United States, that he can be held as a criminal and can be tried.

But this thing would make a man a criminal who merely overestimated the degree of force necessary for him to perform his duty.

Dr. HANNAH, Again, I don't want to dodge my responsibility as a member of the Commission and as its Chairman.

But with the distinguished attorneys that we have on the Commission, I defer to their judgment in matters of this kind, and I would like to ask Mr. Bernhard if he has a response.

Mr. BERNHARD, I presume, Mr. Chairman, you are referring to our recommended amendment of 242, title 18.

Senator ERVIN, Yes, the second section of the recommendation.

Mr. BERNHARD, That is correct. That really grew out of an attempt actually to delimit more clearly the coverage of 242.

As you know, the *Screws* case very much limited the effectiveness of 242 as a weapon to be sure that citizens not be deprived under color of law of certain constitutional rights.

The problem has been that even if an officer happened to beat somebody who happened to be a Negro in a jail cell, if he didn't happen to almost say at that time, "I am doing this because you are a Negro," you couldn't get a conviction.

This is really the story of the Raiford prison case in Florida.

The idea of the Commission here was to try to spell out certain specified acts which if done under color of law, which deprived individuals of constitutional rights, would violate the statute. A simple assault and battery, we would not presume to be a deprivation of constitutional rights.

Senator ERVIN. This is not that restricted. This makes it easier in effect to convict State officers. It is not restricted.

Mr. BERNHARD. The thrust of this recommendation is not to make it easier to convict State officers.

Senator ERVIN. Oh, yes; because under the *Screws* case you had to show an intent to deprive the other party of a right secured to him by the Constitution or the laws of the United States. This recommendation tries to render it unnecessary to prove any such intent, but to make it merely whether the officer overestimated the force necessary to overcome forceful resistance.

Mr. BERNHARD. As I read the recommendation, as I know something about the background and the intent of it, the clear purpose was, to assure protection of individual rights against acts under color of law, but more important to specify those acts that would be covered and make Federal statutes clear so that a police enforcement officer would know precisely rather than have to gamble on what acts would subject him to Federal criminal prosecution.

Senator ERVIN. The only thing I have to go by is the English language which is used in the report.

It recommended to "consider the advisability of enacting a companion provision" and so on "to section 242 of the U.S. Criminal Code which would make the penalties of that statute applicable to those who maliciously perform under color of law certain described acts including the following: Subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody."

Mr. BERNHARD. That is correct.

Senator ERVIN. I have no objection to the old law. I think it was good. But I don't think the Federal Government ought to specialize in the prosecution of State officers who used excessive force on criminals or persons charged with violating State laws.

Mr. BERNHARD. We could argue about this one. I don't think it would help.

Senator ERVIN. Yes, we could argue about it.

I think at the present time considering the crime rate in this country that we would do better to be worrying about those folks who are committing crimes rather than worrying about making criminals out of the law enforcement officers who try to prevent crimes.

Mr. BERNHARD. We have some other recommendations which I think would help in the situation to which you are reacting.

For example, the recommendations which would improve the quality, the training, the scientific detection and competence of police enforcement agencies through grant-in-aid programs, I think would certainly help to stem the crimewave.

Senator ERVIN. I don't quarrel with that recommendation. I think it is very good.

Dr. Hannah, I know you have probably got other things to do and I don't want to detain you too long.

Counsel says he would like to ask you a couple of questions. I have enjoyed my colloquy with you. I still take the position that most of these recommendations would either rob the States of powers that they ought to have, or would rob individuals of rights equally as precious as the ones that the Commission is concerned about obtaining for certain of our citizens.

Dr. HANNAH. Thank you very much, Mr. Chairman. I am sure if we can get the people of good will of this country to recognize this very serious problem—and as I said earlier it will not go away, and we are going to have to take it as it is and work at it—we can make real progress.

If we don't we are going to have more serious problems than we now have.

Senator ERVIN. Of course, Dr. Hannah, I am a southerner. I think I can discuss these questions as intellectual problems and not get my emotions involved, but one of the tragic difficulties of this thing is the effort, as I see it, to resort to the law for coercive measures, and the demands of the persons who support these laws is I think aggravating this situation considerably.

People have largely a choice between the two extremes. That is what bothers me about the problem.

I have always had the feeling that you are not going to get any ultimate solution to this problem or to any other problem in human relations that is really effective except by solutions on the local level.

There must be mutual tolerance and good will and cooperative efforts.

But one of the tragic difficulties in the South today is the fact that so many of those in this field have become so extreme that it is very hard for a person to find a middle ground.

Dr. HANNAH. I recognize that, sir. We recognize one of the real problems is the disappearance in many areas of the South of the middle and somehow or other there has got to be a middle again.

Mr. CREECH. Dr. Hannah, the administration's bill, S. 1117, and also S. 1219 have almost identical provisions with regard to the expanded operations of the Commission, and specifically these bills provide for the Commission becoming a source of advice and technical assistance concerning equal protection of laws.

I wonder, sir, if you could tell us specifically what type of instances or what type of procedures or actions the Commission envisages under this provision.

Dr. HANNAH. If it is agreeable, sir, I would like to ask Mr. Bernhard to answer this question.

Mr. CREECH. Certainly.

Mr. BERNHARD. Over the past year we have had a continuing barrage of requests for advice about civil rights including requests for assistance and direction from many of the Federal agencies.

I would assume that if this particular bill is passed, with the provision in it, the Commission would be in a position to respond to requests from the Department of Labor if they happen to have problems with State employment services or apprenticeship training, or problems of coverage of grants in aid programs, where needed particular information or advice.

I would think the same would be true regarding the State Department when they have had particular problems or complaints.

We have had continuing relationships with the Department of Defense on problems of discrimination that are filed there, and they need further information as to how these problems have been resolved in other areas.

Overall, I think this is one of the main functions we have performed.

Now, most importantly, during the past year we have had many requests for advice, assistance, and information from the White House, and we have tried to fulfill these. But requests for assistance had to be put on the back burner and given secondary treatment.

So the first area I think where we would operate would be to provide information upon request to the Federal agencies.

I think similarly this would be true regarding the States, municipalities, private organizations, labor, business, and so on.

This is what I would contemplate.

Mr. CREECH. Would it be a fair statement, Mr. Bernhard, to say that what you envisage is a program of liaison in consultation with various agencies of the Government, State and Federal, regarding their responsibilities, and putting them in proper perspective?

Mr. BERNHARD. I think it would be more in terms of providing them with information that they might request, whether it is factual information or advice based on experience we had had about how they could proceed effectively, and how other people had done these things.

Mr. CREECH. The Attorney General has said in his justification for appropriations to the Civil Rights Division of the Justice Department that—

in addition to the enforcement of civil rights statutes that it undertakes a program of liaison and consultation with law enforcement agencies and other officials of the States in order to promote understanding of the problems and it places State and Federal responsibilities in proper perspective.

and at the same time the former Assistant Attorney General, Mr. W. W. White, said:

We have in mind the great importance of the collection of far greater information both factual and legally in the whole civil rights area.

I wonder, sir, in your view if there would be any duplication of the function you envisage for the Commission and that presently performed by the Department of Justice, Civil Rights Division.

Mr. BERNHARD. No, I don't see any duplication at all.

In fact, I have discussed this particular matter with the Deputy Attorney General, the present Deputy Attorney General, as opposed to the one who is now a Supreme Court Justice.

He has indicated to me that as far as he sees it, there is no conceivable area of duplication here. The function they contemplate is one where they will attempt to secure and maintain and disseminate information when it has to do with a pending or contemplated lawsuit.

They do not intend to act as a clearinghouse of general information about civil rights. They do not intend to concern themselves with the Federal programs in housing, in Federal employment, in the areas of Federal assisted education, with problems of administration of justice, concern with the American Indian, problems with the Spanish-speaking American, and the various areas in which the Commission has been involved. So there is no duplication.

Mr. CREECH. You say they do not intend to concern themselves?

Mr. BERNHARD. They do not intend and are not now looking toward building up any type of overall informational institution within the Department of Justice.

Mr. CREECH. But is it your view that they are not presently performing this function?

Mr. BERNHARD. I don't know that. I have no idea. I would tend to doubt it, but I think you would probably have to get that information from them.

I have no information that they are carrying out that function at the present time.

Mr. CREECH. Senator Harrison Williams in testimony before the subcommittee seemed to feel that what you might have in mind as falling within the category of technical assistance would be something akin to the field office system employed by various governmental departments to work directly at the community level with various problems.

I wonder if you would care to comment upon this feeling of the Senator.

Mr. BERNHARD. I don't think the Commission has really ever considered precisely how we would carry out the function of providing information and acting as a clearinghouse.

As you know, we have advisory committees in all 50 States. We have some regional consultants who help to provide information. It may very well be that the most effective way to carry out this program would be to bring it to the local level and staff it, where possible, with people who are indigenous to that community.

It may very well be that the Commission would decide that this was both an economic and an effective way of carrying it out.

But I think it is premature to determine that.

Mr. CREECH. You have mentioned the various State committees. If Congress were to decide to permit the Civil Rights Commission to expire, could not the State advisory committees continue to perform their functions under the Attorney General?

Mr. BERNHARD. I don't really see how this could ever be done. The advisory committees operate without compensation. They are only paid their expenses when they travel and when they meet. They are voluntary groups that attempt to gain factual information and assist the Commission in making its recommendations to the President and the Congress, and they continuously look toward advice and assistance from the Commission, and attempt only to get that information which they think is within the mainstream of civil rights problems across the board.

Now, the Attorney General, while the operation that he has had expanded considerably in the last month in terms of substantive coverage nonetheless will not be operating in the broad areas in which the Commission now operates.

And if the advisory committees are to be effective they cannot be restricted to providing information for specific lawsuits.

I do not see what the effect of their work would be unless it is in fact to gain information across the board that they can evaluate freely and independently and give to a body which independently itself is the factfinding agency for the President and the Congress.

I don't see a function there at all.

Mr. CREECH. Of course, the Attorney General does, does he not, on occasion appoint various committees to advise him, committees which serve without compensation and committees which function very much in a manner akin to that of the State advisory committees?

Mr. BERNHARD. These advisory committees don't operate without direction. They aren't self-motivated. I think they need considerable staff help and staff assistance.

I don't think you can just set up a body in the civil rights area as complex and sensitive and difficult as it is and say, "advise us about civil rights."

I think it needs much more direction than that.

Mr. CREECH. What would be your reaction, Dr. Hannah, if Congress chose to incorporate in a bill extending the life of the Commission provisions guaranteeing the rights of confrontation and cross-examination to witnesses subpoenaed by the Commission? Perhaps Mr. Bernhard can give us his views on this question also.

Dr. HANNAH. Again, sir, this is one of those questions that concerns legal minds and judges. This has been discussed by the lawyer members of our Commission and I should like to ask Mr. Bernhard to answer this one.

Mr. BERNHARD. I think the Commission should be in the position to operate to the same extent as any factfinding agency in the executive branch or Congress.

Our rules of procedure are the fairplay rules of the House, and I think that if you have confrontation and cross-examination you end up in a situation where you do not get full factual information.

You have a situation where everybody comes in and makes a three-ring circus out of it rather than a carefully directed hearing.

I think you only need confrontation when you have a situation where individual rights are being adjudicated. This is not the function of the Commission. This is an issue that was raised in the Supreme Court in the case of *Hannah v. Laroche* and it was determined that both as to the letter and to the spirit of the law, the Commission's hearings were fair.

I think that it would be difficult for the Commission to fulfill its function for another reason, which I think is of extreme importance.

When we get information, quite often we get it from individuals, Negroes who are very timid, who are uneducated, and who are afraid, and if they know that prior to the time they come before our Commission there will be people who in any way attempt to bring reprisals or intimidate them, then they may not appear at all.

I think that one of the reasons that these rules have worked effectively is that we have been able to protect them and at the same time I know of no instance, not a single instance when we have violated anybody's individual rights, no instance, and I am talking about this across the board.

Senator ERVIN. You have got some sort of a philosophy like the justice of the peace down in North Carolina. He was trying this little

civil action one day and when the plaintiff finished offering his evidence the justice of the peace looked over at the defendant and said, "I would appreciate it very much if you wouldn't offer any evidence in this case." He said, "When I don't have but one side of a case I don't have any trouble reaching a conclusion, but when I have both sides I get all confused."

Mr. BERNHARD. I think the justice of the peace case is very relevant to an actual adjudication. But I think our situation is more akin to the fellow who was on the stand and was accusing someone else of having assaulted him, and he was very much battered by the defense attorney, and finally the defense attorney said, "Well, you come on down here and you show me how hard this man hit you."

And he came down and he walked over to the defense attorney and hit him in the nose and threw him down, stomped on him and kicked him and the defense attorney said, "Is that what you call having hit the man a little," and he said, "Well, it was about a tenth of that."

I have the feeling that our hearings are about a tenth of the possible effects of any adjudication that might be before this justice of the peace.

Senator ERVIN. According to my construction of *Hannah v. Laroche*, the majority of the court held in that decision that Congress could create the Civil Rights Commission as an agency in the executive branch of the Government and give it far more drastic investigatory power with a view to reporting and recommending legislation than the Court held that Congress itself possessed under the Constitution in the *Watkins* case.

Dr. HANNAH. I don't think I could contribute anything to the answer of the question, Mr. Chairman, but I should like to say that the Commission has been sorely troubled by the fact that sometimes when we have held our hearings, we have subpoenaed before us Negro citizens to give testimony under oath, knowing that the chances were very good that they were going to have a very rough time in the communities where they lived because of their testimony.

This has really troubled us because the facts have indicated that sometimes they have had a very difficult time.

I am sure you would recognize from the make up of the Commission that we want to be fair always. We have tried to be fair. So long as the present membership holds it will be fair.

Mr. CREECH. Dr. Hannah, do you feel that if Congress should allow the Commission to continue but not grant the extended authority which these bills request, this in any way would affect your feeling about the necessity for and the desirability of continuing the Commission?

Dr. HANNAH. I think yes. My feeling is that if the Commission is to be as useful as it could be, it not only needs to be continued but also serious consideration should be given by the Congress to granting these additional responsibilities that the proposed legislation requests.

I want to emphasize that I am speaking as an individual on this.

If the Commission is to be continued only as a factfinding organization, to make recommendations to the President and the Congress, its usefulness will be limited.

I think it will have use. I think it has been useful to serve as a conscience for the American people, but I think it could be more useful if some of these additional powers and assignments are granted.

Mr. CREECH. Would you care to say anything else about that? I would just like to ask this: Do you feel the Commission should be permitted to expire if Congress doesn't grant it this new authority?

Dr. HANNAH. Again, sir, this is a judgment that the Congress should make. I am sure you recognize that up until this point the Commission has never before recommended its extension.

The Commissioners as individuals and the Commission as a whole on both previous occasions when its 2-year period was expiring have refrained from making any recommendations at all.

They said this was a matter for the Congress to determine. In this case we have recommended our continuance. We are living in a different kind of a situation. There is a feeling on the part of the Commission that it is important that it be retained, that we need all of the devices that we now have and possibly more if we are going to deal with this increasingly difficult problem.

Your specific question was "if the Commission is going to be continued only as it is would it be better to let it die?"

I think it would be better to keep it than to let it die, but its usefulness will be very limited.

Mr. CREECH. Sir, what impact do you anticipate the increase of authority of the Commission as provided by these bills would have on the Commission's appropriation?

Dr. HANNAH. I would like to refer that question to Mr. Bernhard, since he and the staff have given it some attention and I have not.

Mr. BERNHARD. Mr. Creech, initially, I think there would be no difference because it would mean that we would change our functions, begin to reduce our long-range factfinding to accommodate the functions of providing information and technical advice and assistance to people upon request.

Right now, as you know, all of our budget goes into comprehensive factfinding in about 10 different areas, and I would not contemplate that this would continue.

There may be areas where we know so little that in order for us to establish a proper library that will be capable of use in providing information, we may have to continue factfinding.

But I don't think this would be a prime function. So I think as we decrease factfinding we would increase the other functions, and I do not see that there would be any initial increase I can't contemplate what increase would ever be needed but I don't see an initial increase.

Mr. CREECH. Do I infer from what you have said, sir, that you envisage almost a complete change in the type of operation which the Commission will be undertaking, and that you will shift your emphasis from factfinding to providing information upon request?

Mr. BERNHARD. Yes, if you stick with the word "emphasis," that is right.

Dr. HANNAH. I should like to add the additional word, sir, that the present membership of the Commission are not empire builders.

I don't know what future Commissioners might decide, but there has been no desire on the part of the present Commissioners to build up a big national organization and spend a lot of money just to be involved as part of the Federal bureaucracy.

Mr. CREECH. Dr. Hannah, earlier Mr. Bernhard gave the subcommittee the benefit of his thinking concerning the provision of the bills

relating to the technical assistance which the Commission would render.

Have the members of the Commission themselves gone into any detailed consideration of what they envisage for the Commission's technical assistance operation?

Dr. HANNAH. In a detailed way, no. The Commission will hold its next scheduled meeting on the 18th, and at that time the Commission may give it some consideration.

There have been informal discussions, but the quick answer to your question is "No."

Do you want to add to this?

Mr. BERNHARD. No. These matters have been discussed with all of the Commissioners but we have never sat down formally to lay out a program in any detail.

Dr. HANNAH. It is a little presumptuous when you assume that Congress is going to act on anything and spend a lot of effort and time to set up something based on recommendations of some agency.

Mr. CREECH. Dr. Hannah, when the Commission issues a report, is it approved by each member of the Commission who signs it? Does he approve the final version of the report before it is issued?

Dr. HANNAH. The technique we have used so far in these reports, all of the reports where there are recommendations, is that the Commission sits together, agrees on the intent of what they want in the recommendations, agrees on a draft.

Sometimes, of course, it is difficult to get six people writing a report or writing a recommendation.

In some cases where the exact wording is not decided upon, the intent is agreed upon and it is left to the staff to come up with some words which again are recirculated.

Of course, there have been two kinds of recommendations. There have been unanimous recommendations and the understanding in the beginning was that any member of the Commission who wanted to dissent on any recommendation or any portion of a recommendation should do so, and in some instances they have.

But there has been nothing in the way of a recommendation that hasn't been cleared with all the Commission participating in the discussion.

There has been agreement at least on the part of the majority of the Commission as to what should go into the report, and finally the exact language has been circulated, and all Commissions have had the opportunity to participate in the final decision.

Mr. CREECH. So the exact language of each of your reports is circulated among the members before it is released as a Commission report and approved by those who sign it, is that correct?

Dr. HANNAH. That is correct, and the wording of the recommendations are taken sufficiently seriously so that they have all read them in detail and have had an opportunity to suggest changes or to dissent.

But, of course, when you come out with five volumes, to say that every word and every paragraph has been considered by the Commission session, this is not true. These are circulated with ample opportunity for members of the Commission to make changes and dissent if they care to.

Mr. CREECH. Would a short report such as your interim report on Mississippi, be reviewed by each member of the Commission who signed it personally?

Dr. HANNAH. By all the members of the Commission. This was entered into very seriously, the nature of the report was understood by the Commission, and it was very carefully reviewed by all the Commissioners and there were no dissents.

Senator ERVIN. Since I called attention to the change in population of the District, I would like to put into the record these figures about the number of white children enrolled in the public schools of the District of Columbia.

In 1930-31 session there were 51,367, in 1940-41, there were 51,547, the 1950-51 session there were 46,763, in the 1960-61 session there were 24,982. In 1961-62 there were 23,762, and in 1962-63 there were 22,280.

The number of nonwhite children enrolled in the public schools of the District of Columbia for 1930-31 was 27,091, in 1940-41, 36,263, in 1950-51, 47,980, in 1960-61, 97,897, in 1961-62, 104,702, in 1962-63, 112,095.

These facts would indicate to me that most or rather a considerable number of the white people who have children of school age have moved out of the District.

Thank you, Dr. Hannah.

Dr. HANNAH. Thank you, Senator.

Senator ERVIN. I hope we haven't detained you too long.

Dr. HANNAH. I have enjoyed it and appreciate your courtesy.

Mr. BERNHARD. Thank you, Senator.

Mr. CREECH. The next witness will be Dr. Duncan Howlett, a member of the District of Columbia Advisory Committee of the U.S. Commission on Civil Rights.

Senator ERVIN. Glad to have you with us, Doctor.

STATEMENT OF DR. DUNCAN HOWLETT, CHAIRMAN, DISTRICT OF COLUMBIA ADVISORY COMMITTEE, CIVIL RIGHTS COMMISSION

Dr. HOWLETT. Thank you, Senator. You have my written statement, and if it is agreeable with you, instead of my pondering through it again and reading it, I would like to comment on it.

Senator ERVIN. Yes. That will be permissible, and let the record show that immediately after testimony of the witness, that the written statement will be printed in full in the record.

Dr. HOWLETT. Thank you.

I am Duncan Howlett, Minister of All Souls Church, Unitarian, and I am Chairman of the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights.

My reason for coming before you is based on my own experience: my experience as Chairman of one of the advisory committees that works under the U.S. Commission.

I took on this post because of my work as minister of an integrated church. That is in a neighborhood which is changing very rapidly, I came to see the importance of doing something to assist a downtrodden portion of our society.

When I became chairman of the committee, in order to encompass the work that was before us, I divided the committee into four sub-

committees: one on housing (that is, metropolitan housing for the whole area); under the dean of Georgetown University, one on the centennary of the Emancipation Proclamation under Henry K. Willard, Treasurer of the American Security Trust Co. here in the city; one on employment practices under Ben Segal of IUE; and the fourth on the administration of justice under Dean Patricia Harris of Howard University.

What I would like to do is to illustrate my experience through the work of one of the subcommittees, the one on fair employment practices.

We had what we called an open meeting on the 27th and 28th of February and on the 1st of March. Actually it was conducted somewhat as these meetings are, in the form of a hearing, but we had no authority to summon witnesses. It was entirely voluntary, and so we called it an open meeting.

But eight of us sat behind a long table as you do, and listened to people who are citizens of our community come before us and talk about the employment situation as it exists here in the District and as it applies to the Negro.

We did that for 3 days. What I would like to get over to you, if I can, is the significance of this approach to the problem of civil rights. In the first place, the impact on the community of these hearings—excuse me, of this open meeting—was considerable.

The newspapers gave it great attention. There were detailed reports of the statements that were made before us, as a result of which people learned what they had not known before, namely the extraordinary depravation that the Negro is subjected to, and the problems that he faces in trying to find employment for himself adequate to his needs.

In the second place, and I would say this was even more important, that was the impact of the statement making process on the men who came before us to make the statements.

Most men are men of integrity, conscience and honesty, and more than one man found himself before us reading a pious statement that his organization or group had made with regard to employment practices. In the course of the interchange of question and answer and the other statements that had been made before us, it became perfectly clear that there was a wide discrepancy between his pious purpose and what was actually going on in the organization he represented.

This was true of both employers and the labor unions. And I felt myself that this impact upon these men was of itself important. It caused them to realize that there was more of a problem here than they had seen until they undertook to make a statement on it under these false circumstances.

And thirdly, I would say that it was of importance to me personally. I came out of those meetings a different person than when I went in. I began, as I said, because I believe in the importance of this problem, but I certainly had no conception of what the Negro seeking employment is up against in the District of Columbia, until I had heard these statements.

You might say, "All right, you will perhaps change it as a result of this, but one person really doesn't make much difference." But I find myself frequently in a position where I am able to express my convictions and my observations to people.

Most recently, for example, on a TV documentary, which apparently was widely viewed from all I hear. I enabled, I think, the community to learn what it ought to know through the activities of this advisory committee to the Commission on Civil Rights; so I would just summarize my comments by saying this in conclusion: that I think that this is the American way to go about tackling a very difficult problem, to arouse the conscience of people, to let them see what the problem is, to gather facts, to point the moral, to call for action, and by virtue of all this, to get at it and to do it through volunteers, none of whom are paid anything, all of whom give their time for what they believe to be right.

Senator ERVIN. Doctor, the employment problem in the District is very bad, isn't it?

Dr. HOWLETT. Not overall, but in the Negro community it is very bad; yes.

Senator ERVIN. Most of them are unskilled, or a large proportion of them are unskilled.

Dr. HOWLETT. Yes, they are.

Senator ERVIN. I think this is not peculiar to the District, but over the country generally. In the old days when we did so much more by hand labor, there was a larger percentage of jobs for people of that kind who have been eliminated through automation and use of machinery.

Dr. HOWLETT. Our country is changing very rapidly.

Senator ERVIN. In my part of the country people used to work on the roads with mules and these little drags. Now a big bulldozer comes along, and in an hour does more work than many men could have done in a day.

Dr. HOWLETT. Yes.

Senator ERVIN. That is one of the tragic facts particularly for the people of the Negro race, that they fall into unskilled classifications.

Dr. HOWLETT. Not because they are Negroes but because they are poor and unskilled.

Senator ERVIN. Doctor, we appreciate very much your appearing before us. Your entire statement will be printed in the record at this point.

Dr. HOWLETT. Thank you.

(The document referred to follows:)

STATEMENT OF DR. DUNCAN HOWLETT, MINISTER, ALL SOULS CHURCH, UNITARIAN, AND CHAIRMAN, DISTRICT OF COLUMBIA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

As minister of All Souls Church, Unitarian, an integrated church, I have been increasingly concerned since my arrival in Washington in 1958, with the problem of race relations in the Nation's Capital. A serious problem exists here as in other parts of the country, and it is growing more acute every day. The Negro population of this city has been squeezed into what amounts to a ghetto.

We have made progress in our race relations but we have not yet come to grips with the underlying causes of the poverty, slum conditions, and juvenile delinquency that exist here, due in no small part to the de facto segregation that prevails. Housing remains as segregated as ever; employment opportunities for Negroes are still severely circumscribed; and the schools in the District of Columbia, whose pupil population is now approximately 85 percent Negro, are incredibly overburdened and underfinanced.

This situation is both disgraceful and dangerous. Surely we would wish to remedy it even if Washington were not the Capital of the United States of America. Since it is the Capital not only of the United States, but in a sense, of the entire free world, it is inconceivable that in the face of it we can stand idly by any longer.

It was my deep sense of concern for this problem that prompted me to accept the chairmanship of the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights a year ago. Although already overcommitted to community causes, I accepted this additional post because I believed that a group of citizen volunteers acting under the aegis of the U.S. Commission on Civil Rights could make an essential and constructive contribution to the problem. I have not been disappointed. In the year that our committee has been in operation a subcommittee on housing, working jointly with the Advisory Committees of Maryland and Virginia, sponsored a meeting on the President's Executive order on equal housing opportunity; a special committee on employment held a 3-day public conference on equal employment opportunity in the District of Columbia; and a special committee on the centennial of the Emancipation Proclamation sponsored a number of appropriate commemorative events. In addition, our committee endorsed the findings and recommendations of the Commission's report on housing in the Washington area.

But we have only begun. We have served a beneficial purpose, I believe by bringing to light and pinpointing facts regarding racial discrimination of which our community has always been vaguely aware. We have helped to separate fact from fiction. But all this is preliminary. Finding facts may be a necessary prerequisite to action, but it is not action, and nothing less than direct action is needed now.

We can continue our work and move from talking to doing only if Congress sees fit to extend the life of the U.S. Commission on Civil Rights. An extension of more than 2 years is an urgent necessity if our District of Columbia Advisory Committee is ever to get beyond the factfinding and recommending stage. Since our Committee consists entirely of volunteers, all of whom maintain very heavy schedules, our progress is necessarily slow. Our plans, therefore, must be long range. If we are to fulfill our obligations to the Commission and the District of Columbia, we must be permitted to plan more than 2 years ahead.

Our experience here in the District of Columbia is no doubt typical of most if not all of the advisory committees to the U.S. Commission on Civil Rights, and this is my reason for coming before you today. The Commission relies heavily upon the work of the advisory committees. Many of them have already distinguished themselves and performed an important service for the Commission. This work must go on. And what is true of the advisory committees, is even more true of the Commission itself. It must be continued, not only for the sake of advisory committee programs, but even more, for the sake of its own program. I therefore urge that the U.S. Senate will enact S. 1117 extending the Commission on Civil Rights for 4 more years.

I would also like to voice support for the clearinghouse and technical assistance functions which the bill would give to the Commission. The State advisory committees should, as I have already insisted, do more than merely gather facts and report them to the Commission and the public at large. If the Commission were given a clearinghouse function and were authorized to render technical assistance to public and private organizations seeking such assistance, the advisory committees, as well as the Commission would be enabled to offer assistance where needed. Here in the District of Columbia and in the 50 States of the Union, we need a clearinghouse such as that suggested by President Kennedy and incorporated in S. 1117. As a participating member of the Civil Rights Commission structure, may I commend Senator Hart for introducing this bill. May I urge you to recommend it to the Senate, and may I take this opportunity to express my thanks to the Congress for the creation of the Civil Rights Commission in the first instance.

Mr. CREECH. The next witness is Mr. Allan Howe, representing the Young Democratic Clubs of America.

STATEMENT OF ALLAN T. HOWE, PRESIDENT, YOUNG DEMOCRATIC CLUBS OF AMERICA

Mr. Howe. Mr. Chairman, I am Allan T. Howe of Salt Lake City, Utah, president of the Young Democratic Clubs of America. I appreciate this opportunity to appear before this committee to present the views of our organization on Senate bill 1117.

This proposal, sponsored by Senator Hart and some 30 other Senators of both parties, embodies the President's recommendations concerning the U.S. Commission on Civil Rights. The President proposed that the Commission "serve as a national civil rights clearinghouse providing information, advice, and technical assistance to any requesting agency, private or public" and that its life be extended for a term of at least 4 more years. This is in accord with official positions taken by our organization.

Since its inception in 1957, the Commission on Civil Rights has investigated and issued a series of reports on denials of equal protection of the laws in education, voting, housing, employment, and administration of justice. These reports have been based on extensive public hearings held in all parts of our Nation, on the investigation of specific complaints and on thorough and comprehensive field studies. The statistics have been gathered, the facts documented, and the recommendations for remedial action submitted to Congress and the President.

Several of the Commission's recommendations have been prepared in legislative form and are now pending before Congress. The sixth-grade literacy test voting bill and the bill providing for Federal technical and financial assistance for desegregating school districts are two of the Commission's legislative recommendations which the President has urged Congress to adopt.

But beyond recommendations for congressional action, the Commission has effectively advised the executive branch on a whole series of remedial policies which have furthered equality of opportunity for all Americans. I would like to refer to only a few of the advances made by this administration which were possible by the study and recommendations of the Commission.

The 1961 education report of the Commission spotlighted several areas where Federal programs were operating so as to encourage discrimination. Under the impacted school aid program which makes vast sums available to school districts for the education of the dependents of military personnel, there had been no effort to assure these children would be afforded the opportunity to attend desegregated schools as required by the Constitution. In fact in community after community, our servicemen, called upon to defend, protect, and uphold the Constitution, were forced to send their children to segregated schools, operated in violation of the Constitution and with the aid of Federal funds. After the Commission focused public attention on this situation, the former Secretary of Health, Education, and Welfare announced that beginning in September 1963 segregated schools would not be considered "suitable" for on-base children and that nonsegregated on-base education will be provided. In implementing this ruling, the Departments of Health, Education, and Welfare, and Justice have conducted a series of negotiations with school

districts in an effort to secure compliance. As a result over 12 districts have said that they will admit on-base children on a nonracial basis. Some have even gone beyond this by indicating that they will adopt policies of nondiscrimination which would benefit all students. When negotiations were not successful in securing the desegregation of the federally aided schools, the Justice Department announced the initiation of law suits in five areas and the Department of Health, Education, and Welfare announced that schools will be built on-base in eight other areas.

This coordinated effort by several Federal departments will assure a "suitable" desegregated education to dependents of military personnel and will bring many school districts into compliance with the Constitution.

This is only one example of the impact which the Commission's study and recommendations have had on the development of administrative policy for the protection of equal rights. In the field of higher education, the Commission has recommended that assistance to colleges be dispensed only to those publicly controlled colleges and universities which do not discriminate. Again, after the facts were brought to light by the Commission, the Department of Health, Education, and Welfare and the National Science Foundation adopted policies which now require that contracts with universities for summer teacher training institutes contain a nondiscrimination clause. As a result, Negroes have been able to take advantage of these programs at southern colleges and universities which heretofore have excluded them.

The Department of Labor has strengthened the nondiscrimination regulations of the Employment Security Service and has succeeded in bringing about the desegregation of a number of State employment offices in the South, following the issuance of the findings and recommendations of the Commission.

In the field of housing, the historic Executive order barring discrimination in federally aided housing was signed by the President following the unanimous recommendation of the Commission. In these and other cases the Commission's studies and recommendations have been implemented by the administration in such areas as employment, education, housing, voting, and the administration of justice.

Thus, the contributions of the Commission as an aid to the executive branch of Government in the development of sound civil rights policy have had a profound impact on the future of our country.

While it is important that the Commission continue its factfinding and reporting function, the commission has demonstrated its capacity to perform an even greater service. What is now needed is technical assistance and consultation on the means by which these and other nondiscriminatory policies should be implemented.

In the words of the President in his message to Congress:

As more communities evidence a willingness to face frankly their problems of racial discrimination, there is an increasing need for expert guidance and assistance in devising workable programs for civil rights progress. Agencies of State and local government, industry, labor, and community organizations, when faced with problems of segregation and racial tensions, all can benefit from information about how these problems have been solved in the past. The opportunity to seek an experienced and sympathetic forum on a voluntary basis can often open channels of communication between contending parties and help bring about the conditions necessary for orderly progress.

As the President said, if progress is to be orderly, it is essential that a Federal agency be charged with the responsibility of providing expert guidance and assistance in devising workable programs for civil rights progress.

When faced with situations of racial tensions and potential violence, government, industry, labor, and civic groups need a channel by which a peaceful solution may be developed consistent with constitutional requirements and guarantees. The U.S. Commission on Civil Rights is the logical agency to be assigned this task.

However, as the President has stated, if the Commission is to serve as effectively as is needed, it must be placed on a more stable and permanent basis. Local communities cannot solve all of their civil rights problems at one time. New civil rights issues are constantly being presented as communities solve the most pressing issues first. If schools are desegregated and students are trained equally for jobs, employment discrimination will become the pressing issue. If employment discrimination is eliminated and income levels rise, housing discrimination will become the issue for the community to solve. If we are to see steady, consistent, and systematic progress, then the assistance of the Commission will be needed by local communities on an extended basis. For this reason, we urge that the life of the Commission be extended for a term of at least 4 years more.

Mr. Chairman, the President has pledged the resources of the Federal Government to eradicate racial discrimination and put an end to the deprivation of constitutional rights and privileges. The U.S. Commission on Civil Rights, with its functions amended as proposed, would serve our country and all of its people well in redeeming the pledge of the President. The problems have been clearly presented. The technical skill and capacity to resolve the problems are at hand. Our Nation has learned the lessons of Oxford and Birmingham, of Chicago and Washington, that racial relations are changing and that they will continue to change either after violence and bloodshed or after negotiation, consultation, and advice. By applying the technical resources and good offices of the Federal Government to the problems, Senate bill 1117 holds out the hope of peaceful and orderly progress. We respectfully urge that Congress enact this measure and hasten the day when all men may enjoy in freedom the full protection of the laws under our Constitution.

Thank you, Mr. Chairman.

Senator ERVIN. There is a recommendation in here by the Commission that lending institutions be deprived of their complete authority to make loans of their own money as they see fit.

Do you think a lending institution would have much freedom if the Federal Government undertook to control how it should loan the money of its depositors?

Mr. HOWE. I think you are speaking of the provision regarding Federal insurance on housing loans.

Senator ERVIN. All lending institutions that are supervised in any way by any Federal agency, are covered by the recommendations. That would include virtually every bank and every savings and loan league in the United States, wouldn't it?

Mr. HOWE. If it is going to include the granting of loans and rights to individuals, but for the color of their skin would enjoy, it would seem to me that this would be in line with extending that right.

Senator ERVIN. Do you think it would be extending any liberty to lending institutions for the Federal Government to undertake to tell them to whom they should loan their own money?

Mr. HOWE. It all depends what you call liberty, Mr. Chairman.

Senator ERVIN. I was under the impression that lending institutions are engaged in business, and not in social reforms.

Would you favor legislation that would give the Federal Government the power to tell lending institutions to whom they must loan their own money?

Mr. HOWE. It would seem to me I would, if it had anything to do with the right that they enjoyed under the Constitution or under a Federal law.

Senator ERVIN. What right does anybody have under the Constitution to demand that somebody make him a loan?

Mr. HOWE. If the loan is to be insured by some Federal agency or the institution by which the loan is to be made is in any way responsible to the Government, it would seem to me that this would be only right that all of the opportunities that would be available to one segment of our society ought to be available to all.

Senator ERVIN. Do you think it would be extending the principle of liberty to say to a man, "You must loan your money to somebody selected by the Government instead of to the person to whom you desire to loan it"?

Mr. HOWE. I don't think that the proposition is quite that, Mr. Chairman.

Senator ERVIN. That is what it amounts to, exactly what it amounts to.

Mr. HOWE. I think that for many reasons the private institutions can make their own determination as to whom they loan their money.

Senator ERVIN. Provided they do not displease the Federal agency.

Mr. HOWE. Provided they did not base the decision on the basis of the color of skin of the person or his racial background, I think that they ought to have that right to determine that.

Senator ERVIN. Do you think the Federal Government ought to have the right, for example, to come to you and to tell you to whom you must loan your money?

Mr. HOWE. No; if I had no connection with the Government, and I don't attempt to base a loan on any Federal law or any Federal program—

Senator ERVIN. Does the Constitution, give the Federal Government any power to tell anybody to whom he will loan his money?

Mr. HOWE. I don't know of any provision at the present time to that effect.

Senator ERVIN. I don't know either. Would you be in favor of the housing recommendation which lets the Government deprive people of the right to determine who shall use their property and to whom their property shall be sold?

Mr. HOWE. No, I wouldn't, Mr. Chairman. I don't really believe that is the issue before us on this type of thing.

Senator ERVIN. Oh, yes it is.

Mr. HOWE. It seems to me, if I may, the more broad question here is whether or not we are going to extend to all citizens the right which we have heretofore given to some. It seems to me that that is the question.

Senator ERVIN. There is not any proposition here to give me the right to demand that the bank make me a loan, and yet this recommendation in effect is that the Federal Government be given a right to compel banks and all other lending institutions to make loans according to the will of the Federal Government, or lose all the protection of the bank deposits.

In other words, don't you think the recommendations here would result in a drastic impairment of the rights of free enterprise?

Mr. HOWE. I think if it would dictate the individual terms on which a lending institution or some individual had to make their private determination of how they should loan their money or money that they had available in a corporation, I think your point is well taken.

But I think the Government bears some responsibility to all of the citizens if rights are going to be accorded to some for loaning money and the discrimination is going to be exercised as against others, and the Federal Government plays any role at all in the availability of that money for that particular purpose for which it is being used by the institution.

And I think the Government does have a right to attempt to insure that that money can be loaned without regard to the racial background or the color of the skin of the person applying.

And I think that, perhaps, that is what the purpose of the legislation is.

Senator ERVIN. Yes, there is no doubt about that. The purpose of the legislation is to enable or let the Federal Government rob financial institutions of a liberty which they now have. That is the liberty of determining for themselves in all cases to whom they will make loans.

Mr. HOWE. Well, I think that they would still have quite a degree of their own discretion to exercise in determining that, Mr. Chairman.

That would be my view of it.

But I would like to say that my appearance here today is particularly, I think, in behalf of many of the young people of this organization that I represent, and I think that this is a particular problem with reference to young people in our country, that many times young people, of poor economic means, are denied these opportunities whereas if they had more substantial means this may be—

Senator ERVIN. After all, the banks and the building and loan associations are owned by the depositors, and I would hate to think that the Federal Government is going to tell the individuals to whom they must make loans.

It seems to me that that is robbing the depositors of their precious economic liberty.

Mr. HOWE. Well, if a proposal is made on that basis, I would agree with you.

Senator ERVIN. Well, that is what it is.

Mr. HOWE. I think it is a difference of opinion.

Senator ERVIN. Well, it may be a difference of opinion, but isn't it designed to have the Federal Government come in and say that you must make a loan to this man; you turned down his application because of his race, and your statement of your board of directors is that you did it because you didn't think it was a good loan. But

there is no truth to this, and, therefore, you must either make a loan or have your depositors forget their right to have their deposits insured, even though they are paying an insurance premium?

Mr. Howe. Well, if, on the other hand, they are asking from the Government certain rights and certain privileges I think the Government may have some duty here.

If those rights are going to be given to other applicants then they ought to have some right to say that constitutionally "we feel that these rights ought to be allowed to all people regardless of their race."

Senator ERVIN. Well, I regret seeing a younger generation coming along which advocates letting the Federal Government determine who the banks are going to make loans to because I see mighty little liberty in that kind of a theory.

Mr. Howe. Well, I agree with you on that basis, Senator, but I agree that the gist of the legislation is not centered on that point, and that is apparently what your difference of opinion is, regarding that.

Senator ERVIN. Well, the recommendations have held, in effect, that the Federal Government assume control of private property within the District of Columbia to determine to whom or to prescribe to whom a person can lend or sell his private property.

Do you favor the curtailment of the right of private property to that extent?

Mr. Howe. No, I am not in favor of the curtailment of private property at all.

Senator ERVIN. Well, don't you think it would be a serious curtailment of it if the Federal Government should come in and undertake to tell the private owners to whom they should sell their property.

Mr. Howe. Well, I think, Mr. Chairman, that that would be entirely dependent upon the conditions and the degree of involvement of the Federal Government in such a program.

Senator ERVIN. Well, do you think the Federal Government ought to have the power to undertake to tell the people to whom they can sell their property?

Mr. Howe. Generally speaking, no, I certainly do not.

I don't think that was ever intended, and I don't believe that would be the intention of the legislation.

Senator ERVIN. Well, exactly what are these recommendations in this report about housing, if that is not the object?

Mr. Howe. Well, it seems to me that it is to protect the rights of individuals regardless of their racial background or the color of their skin—

Senator ERVIN. Well, what right does any individual have to demand of a person that he let him use his property?

Mr. Howe. Well, ordinarily no right, certainly, under the Constitution. He does not have it.

Starting at that point, that certainly would be true.

If, in fact, the Federal Government is to be involved in the program of financing or in any way making available financing for housing or the negotiations of the loan it would seem to me that the Government ought to have some right—

Senator ERVIN. Well, the Federal Government is not involved in this property in any way.

It seems to me that it is very serious. In any effort to give some Americans some rights, it seems to me very bad to rob all other Americans of other rights.

Mr. HOWE. Yes, sir. I don't think any proposal to end discrimination ought to be at the expense of others.

I don't think anyone advocates that. I certainly do not.

It is not with the intention of asking preferential treatment of a certain group that I think these proposals are made.

Senator ERVIN. I, unfortunately—and I emphasize “unfortunately”—without any solicitation on my part and without any consultation with anybody, was appointed to a subcommittee that handles most civil rights bills. I read a great many such bills—in fact, there were 5 pounds and 3 ounces at one session—but I have not seen a single one of them that did not undertake to rob all Americans of their very basic rights on the theory that the only way that you can do anything for a minority race is to rob other peoples of their rights in order that the minority may get their special rights.

Mr. HOWE. My feeling has always been, Mr. Chairman, that we should not do it at the expense of others, but it should be only according to the segment of society not now enjoying the same rights, the rights that the majority have had.

And I would hope that that can be done in most of these cases without any sacrifice of the rights of the other group.

Senator ERVIN. Now, I notice you spoke of our President's Executive order on housing.

Will you agree with me on the proposition that article I of the Constitution vests all legislative power of the Federal Government in the Congress and none whatever in the President?

Mr. HOWE. Well, I think that is the spirit of that section.

Senator ERVIN. Yes, I think so, too.

Do you not think that when the President takes and adds something to the acts of Congress that Congress didn't add, that the President is, in effect, legislating?

Mr. HOWE. Well, of course, this is a point of great debate, I am sure, in many areas.

I think that this is a—rather than calling it “legislation” I think it is a difference in what we regard as the powers of the executive branch to have—

Senator ERVIN. Well, when Congress appropriates money for specific purposes and lays down the objects or the terms and conditions under which that money is to be used, that is legislation, is it not?

Mr. HOWE. Yes, sir.

Senator ERVIN. And when the President comes along and puts other conditions to that action he is legislating or attempting to, is he not?

Mr. HOWE. Well, if it would be something broader or in addition or something foreign to what the Congress authorized, I presume it would be.

Senator ERVIN. Well, wouldn't you say that it is something foreign to what Congress authorized when the President adds conditions to acts of Congress which Congress itself had specially refused to adopt and voted against when the matter of the legislation was before the Congress?

Mr. HOWE. Well, that is a point of debate, Senator, I realize.

I don't believe that I could agree with that determination of it.

But I think that it is a point of debate, and I realize this is a discussion—

Senator ERVIN. Well, my understanding is that the Congress has repeatedly refused to put any provision in these housing acts prohibiting what is called "racial discrimination."

Mr. HOWE. Yes, I think that is true.

Senator ERVIN. And then the President goes ahead and acts on it, and it seems to me that the President is legislating.

That is what disturbs me about these things as a man who has spent his life in the law.

We have a President who is legislating in violation of the Constitution.

We have proposals that people be robbed of the right of their private properties, that they be robbed by the Government of the right to determine who is going to use their property. To my mind, we have a combat here between liberty and equality.

--- If all of the civil rights bills that have been proposed since I have been here were passed, the American people wouldn't have any liberty left at all, none.

Mr. HOWE. Well, I would hope, Senator, in the end result, rather than taking liberty away from someone and providing it to others, that concept may be found in the extension of the Commission and its work, for instance the matter that is before us today.

It is really a matter of extending liberty to other people and not at the expense of certain groups, but according to what they have long been deprived of having, and what the majority has been enjoying.

And I realize that your determination is otherwise on many of these matters, but it would seem to me that the spirit of what the Commission is attempting to do is not to take away from the many, at the expense of the many or give it to the few, the minority group, but to make all citizens equal under their rights under the law. Well, I appreciate the opportunity to appear here today and I appreciate the time.

Senator ERVIN. Well, excuse me for differing with you and arguing with you, but I do appreciate it.

It may be that you do not accept all of the recommendations of the Commission and you still think it ought to be continued?

Mr. HOWE. I think it does a good work, Mr. Chairman.

I do not believe that any group of men or any organization is infallible, and I wouldn't suggest that everything that the Commission has discussed would be the panacea to all of the problems that we face in this area, but I certainly think it is worth continuing to work in this field and to make the recommendations to be studied.

Mr. CREECH. Mr. Howe, you mentioned that the Commission is the logical agency to be assigned the task of serving as a channel by which a peaceful solution may be developed to combat racial tensions and potential violence.

The Civil Rights Division of the Justice Department was established in 1957, at the same time the Commission was established. Presumably the Commission was to fill in until the Civil Rights Division of the Justice Department was fully in operation. Inasmuch as Congress has been told that the Civil Rights Division of the Justice Department has been given the task of enforcing civil rights' statutes, taken on a program of liaison and consultation with all en-

forcement agencies and other officials of the States in order to promote understanding of the problems of the police of the States and the Federal responsibilities in their proper perspective, do you feel that it would be inappropriate for the Justice Department to become the proper channel to combat racial tensions and potential violence?

Mr. HOWE. Well, I think that is a very good proposal which should be studied carefully.

I think that there may be some overlapping there.

In fact, there may be some area of conflict between that Division of the Justice Department and this Commission, but it seems to me that the Commission, as an agency outside of the Justice Department which is charged with the enforcement with what we now have on the statute books, can play a different type of role in a rather informal way, that the Justice Department could not do.

I hate to use the word "nonlegal" but that seems to be a phrase that might best aptly describe the functions here that could be performed. They would not be done by the same procedure perhaps, is a better word; that the Justice Department would have, and also would not be coupled with the same agency that would be charged with the enforcement in the courts of the provisions that would be enacted into law.

For those reasons I think there is an area of difference and a substantial contribution could be made outside of the work of the Justice Department by the Commission.

Mr. CREECH. Would you favor the Commission's undertaking any actions or any activities which are already undertaken by the Justice Department?

Mr. HOWE. No, I think that the areas that the Justice Department serves in the enforcement area is a particular function that should be left there.

There may be some overlapping and there may be some conflict in the area of study and recommendations in those functions of the Justice Department.

And perhaps some clarification should be given to the differentiation between the functions of these two groups in that area.

Mr. CREECH. Then you would not favor duplicating any of the work which the Justice Department presently is undertaking. Is that correct?

Mr. HOWE. I think that there is enough in this whole area that the Commission could certainly be at work on other problems; yes.

Mr. CREECH. Does it disturb you that the Commission was established originally to undertake a study and make its report within 2 years, that at the same time the Commission was established, the Civil Rights Division in the Justice Department was also established with the idea of this division of the Department enforcing civil rights statutes and undertaking these other programs such as the program of liaison and consultation with the law enforcement agencies?

Does it disturb you that the Commission has been extended now and given some 6 years of life instead of 2 to undertake work that originally Congress envisaged would only take 2 years, and at the same time the Civil Rights Division of the Justice Department has continued to grow and has expanded its operation and is, in fact, undertaking a program of liaison and consultation with law enforcement agencies throughout the country and promoting understanding of

problems and placing State and Federal responsibilities in their proper perspectives?

Mr. HOWE. Well, I think, as I indicated before, if there are areas of overlapping and duplication, that this is a problem that perhaps needs some delineation, but it doesn't disturb me that there has been increased activity because I think in this area we have long left some of these problems where additional emphasis is needed.

And I think we know at the present time that additional tensions are growing, and I think there is a greater need for greater activity by both.

So I am not disturbed by the increased activity.

Mr. CREECH. Well, I think I misstated my question or you misconstrued it.

I did not mean that you should be disturbed by the increased activity of the Justice Department.

I only meant that the Commission was established to undertake a job which, at that time, it was envisaged would take 2 years to do and now it has been extended from 2 years to 6 years, and now they come and say that they don't want to do the job they were originally established to do, but they want to serve in another capacity.

They want to offer technical assistance and advice, and state that "we are going to quit doing factfinding work primarily."

We are told by the Justice Department that this type of activity is already being performed by this Division.

Inasmuch as the Justice Department says that it has its Civil Rights Division to perform this function and Congress is appropriating funds for them to do this, does it disturb you that we have two agencies of Government that are undertaking the same functions?

Mr. HOWE. I would be disturbed if I thought it was exactly the same thing.

I am not that familiar with the details of what the differences are to know whether or not this is exactly the same type of function that we are talking about, but I repeat that I think any time when the problems in this area are mounting in our country that we should not be alarmed, and that perhaps it does take longer and perhaps solutions are reached by those who study these.

They feel that it does take longer or they come up with alternate solutions that may take a different course.

I don't believe in a situation that is as fluid as the subject of civil rights, that that should disturb anyone.

Mr. CREECH. So then whether there is a duplication of functions is not in your view very important?

Mr. HOWE. That, I think, we should try to eliminate if we feel that the additional work is an exact duplicate of what the other agency is doing.

If we feel that it is necessary in a different way or different type of study, I would feel that certainly the added emphasis would be worthwhile.

I repeat that this is a dynamic area, growing and changing by the day, and I think a close analysis of what each of these agencies are doing ought to be given.

Mr. CREECH. Now, you say we should try to eliminate it if, in fact, there is a duplication.

If, in fact, there is a duplication, should we try to eliminate it to the extent of either abolishing the Civil Rights Commission or the Division or give either one or the other the function but not both?

Mr. HOWE. No. I think there is a difference in the work that each of these can perform—

Mr. CREECH. You misunderstood my question.

I am not asking you if you think the functions are identical today.

You said you think if there is a duplication we should try to eliminate it.

My question is, if you think there is duplication is it your view that one should be abolished and the other given all of the responsibility so there will not be any duplication?

Mr. HOWE. I think there is a division in the functions peculiar of the attributes of the agencies that we are talking about, of the Justice Department particularly with reference to the enforcement end and the Civil Rights Commission in the study that they have been making in the areas that they have been working.

I think that that delineation should be made.

Mr. CREECH. I have no further questions.

Senator ERVIN. Justice Harlan has recently said this, and I think that it is a remarkable statement:

Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations, are things all entitled to a large measure of protection from governmental interference.

This liberty would be overridden in the name of equality if the strictures of the amendment were applied to governmental and private action without distinction.

Also inherent in the concept of State action are values of federalism, a recognition that there are areas of private rights upon which Federal power should not lay a heavy hand and which should properly be left for more precise instruments of local authority.

I think that is a very significant statement.

Speaking of those who would demand so many of these so-called civil rights, William White said this:

For now he is raising demands not simply for the just vindication of the Negro's actual rights.

He is demanding the creation, for the Negro alone, of false rights which are not now, and never have been in all the long centuries of an Anglo-American concept based on orderly freedom, the rights of anybody at all.

Fair-minded men, and being fair now requires fairness to the majority as well as to the minority and fairness also to the constitutional truth, will agree that the actual rights thus far denied the Negro must be granted to him.

These actual rights include the ballot and an equal opportunity in all the public facilities, the schools, the parks, transportation, and so on.

But they do not include and will never include, unless the Kennedy administration is to seek that destruction through Congress and the Supreme Court, the destruction of the most ancient and irreplaceable right of man in an open society.

This is the right of privacy outside his public obligations, including the private operation, wise or unwise, of private property.

And I think many of these recommendations of the Commission are inconsistent with that.

I may have a different conception of "liberty," but I think that if a man hasn't a right to his own views, either wise or unwise, he hasn't any liberty at all.

The recommendations are that private individuals be denied the right to sell their property to whom they please, to loan their money to whom they please, and to refuse to loan their money to whom they please. To my mind if a man hasn't got liberty in those fields he hasn't got any liberty at all.

I think a man who does not have liberty to do otherwise than what the majority may think he ought to do with his own private affairs has no liberty at all.

And the trouble of it is that the only authority that the Federal Government has under the Constitution in this whole field is authority to deal with a denial of due process of law or denial of the equal protection of laws not by individuals, not by banks, not by private corporations, but by the States.

Thank you very much.

Mr. HOWE. Thank you, Mr. Chairman.

Senator ERVIN. The committee will adjourn until 10:30, June 12.

(Whereupon at 4:45 p.m., the committee was adjourned, to reconvene at 10 a.m., Wednesday, June 12, 1963.)

CIVIL RIGHTS COMMISSION

WEDNESDAY, JUNE 12, 1963

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m., in room 318, Old Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee), presiding.

Present: Senators Ervin (presiding), Johnston, and Kennedy.

Also Present: William A. Creech, chief counsel.

Senator ERVIN. The subcommittee will come to order. Senator Hill was scheduled to testify today. However, due to other pressing business, he was unable to be here and asked that his statement be printed at this point in the record.

STATEMENT OF SENATOR LISTER HILL IN OPPOSITION TO BILLS EXTENDING THE CIVIL RIGHTS COMMISSION

Mr. Chairman and members of the committee, I am grateful to you for the opportunity of offering my comments in opposition to the measures presently before you to extend the life of the so-called Civil Rights Commission. As you know, I was strongly against the initial creation of this agency and have unswervingly opposed its continuation. My present position is unchanged, for to hold otherwise would be to betray the Constitution that we inherited from our Founding Fathers.

When the Civil Rights Commission was established, I took the position that such an agency was unwarranted and unnecessary and that it would lend itself to unmitigated harassment of local officials and meddling into local affairs. The Commission has been in existence for almost 6 years, and its record has undeniably proven that this concern was well-founded. I think it would be well worth our time to review that record in juxtaposition to certain articles of the Constitution. Surely we will all agree that this great and enduring document must constantly serve as our guideline, and no matter how zealous lawmakers may become in a cause they have espoused, the Constitution must not be forgotten nor ignored. I submit that the Civil Rights Commission has too long flaunted its disregard of that mainspring of freedom.

Let us look at the reports of the Civil Rights Commission, for they patently illustrate the attitude and unconstitutional actions of this agency.

First of all, in its 1961 report on voting the Commission states as recommendation 1 that Congress should declare that voter qualifications other than age, residence, confinement, and conviction of a crime are susceptible to use, and are being used, to deny the right to vote on grounds of race or color. It recommends that Congress enact legislation providing that citizens shall not be denied the right to vote, or to register to vote in Federal or State elections for any cause except for inability to meet reasonable age or length-of-residence requirements, uniformly applied, legal confinement at the time of registration, or prior conviction of a felony.

Recommendation 2 proposed that the completion of the sixth grade in elementary school should be sufficient qualification for voting in all States where a "literacy" test, an "understanding" or "interpretation" test, or an "education" test is administered.

In my judgment, these proposals are wholly unconstitutional. They are in violation of section 2 of article I of the Constitution and the 17th amendment, which reserves exclusively to the States the right to determine the qualifications of electors.

They are in violation of the 10th amendment to the Constitution, which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

They are in violation of the ninth amendment, which states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

These proposals would completely destroy the time-honored constitutional right of the States to establish the qualifications of electors.

Two members of the Commission, Vice Chairman Storey and Commissioner Rankin, dissented in the first recommendation on the ground that it was unconstitutional. In my judgment the second can be no less a violation of the Constitution.

For further illustrations of the unconstitutional attitude of the Commission, I direct the subcommittee's attention to the 1959 report on voting. In that report it was recommended that the President be allowed to appoint election registrars who would administer the State qualifications for elections and issue certificates to qualified citizens.

This recommendation is another example of the proposed encroachment on the rights that have been reserved to our States and to our people. Commissioner John S. Battle, a former distinguished Governor of the State of Virginia, put it well when he stated the following in his dissent to this recommendation:

"I concur in the proposition that all properly qualified American citizens should have the right to vote, but I believe the present laws are sufficient to protect that right and I disagree with the proposal for the appointment of a Federal registrar which would place in the hands of the Federal Government a vital part of the election process so jealously guarded and carefully reserved to the States by the Founding Fathers."

In light of the 9th and 10th amendments and the other constitutional safeguards for the right of the States to qualify electors, this proposal is blatantly unconstitutional.

It contravenes the spirit of the sixth amendment, which states:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed by the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The appointment of Federal registrars would violate the spirit of this amendment because it would remove a local registrar from his duties, and, in effect, condemn him as being guilty of a crime—the crime of unlawfully denying a qualified person of the right to exercise his franchise as a voter in violation of sections 241 and 242 of title 18 of the United States Code.

Regardless of whether or not such local registrar should ever be prosecuted, he would remain forever an accused who did not enjoy the right to a speedy and public trial nor an impartial jury of the State and area wherein the crime allegedly was committed. He would have been denied his constitutional right to be informed of the nature and the cause of the accusations against him. He would have been denied the right to be confronted with witnesses against him and the right to have compulsory process for obtaining witnesses in his favor. And whether or not he employed the assistance of counsel would make no difference, for he would have no defense nor any right to present his defense. Surely such a departure from the Constitution that assures the rights of freemen is reason enough to sound the death knell for a public agency which conceives such a recommendation.

But now, Mr. Chairman, and members of the subcommittee, I must cite the most preposterous recommendation that has come from the Civil Rights Commission. As you know, this agency only recently proposed that the President withhold Federal funds from the State of Mississippi until it agrees to desegregation. To me, such a vindictive proposal if put into effect would be a violation of the due process clause of the fifth amendment, to say nothing of being a clear-cut abuse of the power of the executive branch of the Government. The

proposal that such a condition be attached by the President to the acts of Congress appropriating Federal funds is so obviously a disregard for our very system of government that I am surprised and taken aback by such a recommendation by even the Civil Rights Commission. I was glad to see that the President stated that he had no such power. Government by Executive decree has never been embraced by the people of this Nation, for it is a characteristic of dictatorships and monarchies.

By no means do these illustrations constitute the total of all the recommendations and actions of this agency that violate our Constitution. I should think that these are more than enough reasons, however, to halt the abuse of the principles of law with which we have been endowed.

When the representatives of the free, independent, sovereign American Colonies met in Philadelphia in 1787 to determine what form of government would succeed the tyranny of the British Crown, they had the benefit of the works and labors of great thinkers, philosophers, statesmen, and writers. They had the rich traditions of Montesquieu, John Locke, and all the thoughtful historians and warriors for liberty that preceded them in the vast concourse of history. But this was not enough. It was only through the great assemblage of patriots—deeply devout, dedicated men—that they were able to pen the most nearly perfect legal document that has ever been drafted, the Constitution of the United States.

They had many questions to answer, many issues to determine. It was their task to determine whether or not we should have a parliamentary system of government, a centralized system of government, or a Federal system of government in which the rights and sovereignty of the people would be carefully divided between the State and local governments on the one hand and the National Government on the other. They fortunately chose the latter.

And the foremost consideration in that Convention was not how much of the sovereign rights of the people they desired to yield, but how much of these precious rights they had to yield in order to establish a stable society that would secure the blessings of liberty to themselves and to their posterity. As we all know, the Constitution, as we know it, would never have come into existence if the sovereignty of the States and the rights of the people had not been positively recognized in the Constitution itself.

Of all the liberties which the Founding Fathers enshrined in the first 10 amendments, they specifically designated articles IX and X as the impregnable guardians of the sovereign rights of the States and of the people. Have these rights become any less meaningful to us today? Are the dangers of a centralized government any less? I say "no." It is time to regard these basic tenets of government and law and refuse to extend the life of an agency that has demonstrated repeatedly its unconcern for them.

The bills before you not only ask for new life for the Civil Rights Commission; one of them even seeks to make it a permanent agency of the Government. Both provide for an increase in its power.

In order to justify the Commission's existence, its advocates are now asking that it be made a so-called national clearinghouse for information on civil rights. Even if we should grant that such a service was needed, it is apparently a duplication of similar activities of the Civil Rights Division of the Department of Justice. In the 1959 appropriation request justifications for the Civil Rights Division, its spokesmen stated:

"We have in mind the great importance of the collection of far greater information—both factually and legally—in the whole civil rights area * * *. We think that without such activity we just cannot do the job."

The Civil Rights Commission has already spent almost \$3½ million of the taxpayers' money in their useless ventures. This unwarranted squandering of funds should cease.

Mr. Chairman and fellow Senators, the U.S. Civil Rights Commission has ignored the Constitution, has abused the unlawful power that it was given, and has squandered the taxpayers' money; on the other hand, it has done nothing to deserve the approbation of us as freemen. I submit to you that the bills pending before this subcommittee do not merit the approval of its members and I hope they will be defeated.

Mr. CREECH. Mr. Chairman, the first witness this morning is Dr. Paul Cooke, representing the American Veterans Committee. Dr. Cooke.

STATEMENT OF DR. PAUL COOKE, NATIONAL CHAIRMAN, AMERICAN VETERANS COMMITTEE

Dr. COOKE. Mr. Chairman.

Senator ERVIN. Dr. Cooke, we are delighted to have you with us. Have a seat, please. You may proceed.

Dr. COOKE. Mr. Chairman, the American Veterans Committee (AVC) is an organization of veterans primarily of World War II and the Korean conflict. My name is Paul Cooke, national chairman of AVC and acting dean of the District of Columbia Teachers College here in Washington, D.C.

From the preamble of the constitution of the American Veterans Committee is the following passage, which further identifies AVC:

We, as veterans of the Second World War, the Korean conflict, and World War I, associate ourselves regardless of national origin, creed, or color * * *.

I would like to add here, Mr. Chairman, that we are pleased to include among our membership the Honorable Senators of the U.S. Senate, Senators Javits and Douglas, Mr. Justice Goldberg of the Supreme Court, Mr. Secretary Udall, and I am most sorrowing to say, that a member of our national board, murdered last night, Medgar Evers of Jackson, Miss., was a member of AVC.

AVC has as its guiding principle, "Citizens first, veterans second." Thus guided, we resolved at the 20th anniversary convention of the AVC the first day of the month in Washington the following:

AVC AND CIVIL RIGHTS—RESOLUTION ON CIVIL RIGHTS AND INTEGRATION

Twenty years ago, when AVC was founded, the achievement of equality in every aspect of life—legal, cultural, economic and social—for all Americans regardless of color, creed, race or national origin, became one of the main goals of our organization. In particular, our first platform adopted at Des Moines in 1946, the revision of our platform in 1953 in Atlantic City and numerous resolutions and actions of AVC have spelled out over more than 15 years the meaning and scope of integration and of the equality of rights guaranteed under our Constitution.

Twenty years have passed and much progress has been made in the attainment of our goal, but the progress has been often painfully slow and we cannot in truth say that our goal of an integrated American society which treats equally all of its members without regard to race, creed, color, or national origin has been attained. AVC notes with sympathy the ever-increasing intensity, militancy, and scope of the struggle for equal rights and an integrated society. AVC will continue to participate in this struggle and do all within its means to bring about its victorious conclusion.

I might say that not only do we take positions, but our members picketed at the Glen Echo Amusement Park in this area year before last, protesting the fact that the Glen Echo Amusement Park refused to admit Negroes. We were glad to see our effort of direct action as well as platform and resolution come to fruition with the opening of the Glen Echo Amusement Park in Maryland to all people and without conflict thereafter.

I return to the resolution.

On this its 20th anniversary, AVC zealously rededicates itself to the task of integration of American society so that all its members can equally enjoy life, liberty, and pursuit of happiness which the Constitution promises to all without regard to race, creed, color or national origin.

Only total integration of our society will overcome the poison of racism and religious prejudice which still threatens injury to the well-being of the American people. AVC sharply condemns the acts of violence which are constantly com-

mitted against those seeking to bring about racial integration and equality in our society.

We include the murder last night of Medgar Evers in this condemnation of acts of violence and the murder of William Moore in Alabama and these acts of violence which are constantly committed against those seeking to bring about racial integration and equality in our society.

AVC calls upon all citizens and upon the governments of the States, counties, and municipalities to cease their persecution, wherever they exist, whether by the abuse of the police power or of the judicial process. It calls upon the Federal and State Governments to protect the rights of protest and free speech effectively. It calls upon the Federal Government to use its Armed Forces as well as its power over the purse, if and where necessary, to assure the constitutional rights of every American.

Now, since that resolution and just this morning telegrams went out from our national office to Gov. Ross Barnett, calling on him to request his Mississippi Bureau of Investigation to very carefully and thoroughly investigate this murder of Medgar Evers. A telegram went to the Justice Department, calling on them to instruct the FBI in its Federal assignment to make equally careful this investigation of this murder, and a telegram to the Speaker of the House and to the President of the Senate urging again strongly the need for legislation, and of course before this subcommittee this morning is a request for legislation on the Civil Rights Commission. But of course we realize that together with legislation and enforcement and prosecution and judicial acts that the citizens themselves must act, so we urged the mayor of Jackson, Miss., in a telegram this morning to bring together the leaders of the community, white and Negro, to seek comity, to seek amity, but at the same time to seek the rights of the Negroes in Jackson, Miss., and elsewhere in the State of Mississippi.

The position of the American Veterans Committee is that to achieve integration of American society—and we come now to consideration of the bills before this committee—the U.S. Commission on Civil Rights can and does make a major contribution. Our position further is that the Civil Rights Commission should by all means be given additional years of existence to continue the effective work that it has carried out since the 1957 legislation. In fact, the Congress of the United States—and I changed my testimony from the statement “might well give serious consideration,” after last night’s act, to say that we urge you vigorously and unequivocally to establish the U.S. Civil Rights Commission on a permanent basis.

Thus we support S. 1219 to make the Civil Rights Commission a permanent agency, while recognizing, of course, that S. 1117 makes a strong contribution also to the work of the U.S. Civil Rights Commission, even if it were given only 4 years of existence. But, departing from the prepared statement, in view of last night’s act, Mr. Chairman, we are recommending vigorously and unequivocally the permanent establishment of the U.S. Civil Rights Commission.

We in the American Veterans Committee through the years have had occasion to send statements to the Commission, testify before the Commission, and review carefully its documents. We heartily support its conclusions in “Civil Rights,” the 1961 U.S. Commission on Civil Rights report; also the findings, conclusions, and recommendations known as the “Fifty States Report.” We strongly support the

recent recommendation of the Commission that Federal funds be withheld from States and other political subdivisions which continue to require by law racial segregation.

I might add to the statement that the recent report of the District of Columbia Advisory Committee on Employment to the U.S. Civil Rights Commission is a further effective document showing what the Commission can produce in the way of factfinding and investigation.

In my testimony, showing further interest in the withholding of Federal funds, before the General Subcommittee on Education of the House Committee on Education and Labor, April 23, 1963, I urged that the committee include in the bill before it a passage in harmony with our own AVC platform plank, reaffirmed at the 1963 convention, as follows:

We urge inclusion in all Federal legislation making loans and grants to States, municipalities or private institutions, of a provision requiring these loans or grants to be used without discrimination on the basis of race, color, ancestry, national origin, religion or sex * * *.

The world reacts to U.S. racism: I wanted to make certain observations, Mr. Chairman, with respect to the world's reactions to U.S. racism.

While I was representing the American Veterans Committee and the United States Council of the World Veterans Federation in Copenhagen, Denmark, only last month, the month of May, I had to face the continuing questions of the good citizens of Denmark, as well as all the delegates from Africa.

The questions include the following:

Doesn't the United States realize that the actions of the people in Birmingham adversely affect the status and standing of the United States in the United Nations?

Another question, this time from the United Arab Republic:

Why do you continue to discriminate against Negroes in the United States? Please let them know that they are welcome in the United Arab Republic where they would face no discrimination on account of their race or their color.

While we American veterans were in Denmark, we could read fully of Birmingham policemen setting their dogs on Negroes. When we went to Berlin to lay a wreath at the Brandenburg Gate at the wall to protest Soviet aggression in Berlin and Germany, we could read the New York Herald Tribune European edition about the racial strife in Alabama and the defiant position of Governor Wallace.

We read the account in LeMonde, a Paris newspaper—I brought the clipping back—reporting the efforts to reach accord, Mr. Chairman, between white and Negro citizens in Birmingham, Ala. In Paris Match, the magazine somewhat comparable to our Life, here are the pictures of the police dogs being set upon the Negro citizens in Birmingham for all Paris and all France to see; particularly the coverage of dogs set on Negroes seems to be widespread. Here are several pages of coverage in Paris Match, in the Paris LeMonde. A day or so later when I was in London, here is the London Daily Telegraph, the story of the U.S. Army moving 3,000 troops in Alabama on Mr. Kennedy's orders, Tuesday, May 14, edition of the Daily Telegraph.

About 40 miles from London is a very small town, Banbury. We know it from the nursery rhyme, Mr. Chairman, "ride a cock horse to Banbury Cross."

The Banbury edition of the Oxford Mail, on the front page here for the good citizens of Banbury to learn of the U.S. trouble—"U.S. Race Trouble Spreads"—and here is an account of the U.S. race trouble in Cambridge, Md. The implication is that it spread from Birmingham to Cambridge. I don't know whether that is an accurate implication on the part of the headline writer, but at any rate, the headline says, "U.S. Race Trouble Spreads," and the account is the shift from Birmingham to Cambridge.

The next day, the Daily Telegraph and Morning Post, again London paper—this is Thursday, May 16—"Police State Conditions in Alabama." "Our Risks of Journalists"—and here is an account of a journalist, Mabel Elliott, Daily Telegraph special correspondent, arrested, and the headline, "Police State Conditions in Alabama."

I say that we are hurt considerably by the racism in the United States, and the world papers carry it immediately.

I happened to be out Tuesday night, May 12, and the Herald Tribune was already out for the next day, May 13, carrying in its overseas edition these accounts of the conditions in Alabama.

On my return to the United States after the World Veterans convention, I represented the American Veterans Committee at the foreign policy conference for nongovernmental organizations, and there heard Secretary of State Dean Rusk forcefully advise the conferees of the great damage that racial strife and the reports that I had read in Danish, German, French, and English newspapers do to our foreign policy and to our efforts to persuade the leadership in the world for them to follow.

Now, I return to the Civil Rights Commission and the legislation thereon. The American Veterans Committee believes that the U.S. Civil Rights Commission has made a major contribution. Of course, Commission action alone by no means can solve the complex problems in the field of race conflict. Further laws by the U.S. Congress knocking out segregation in public accommodations, hospitals, schools, housing, and employment are an absolute necessity, and I would add here, Mr. Chairman, that the Congress might well look at the enforcement of the 14th amendment and that provision which has to do with reducing the political representation from States which have limited the vote in those States.

Far more effective action by the President of the United States—although I think he is to be commended for his firm statement last night and for his placement of the race problem on its moral basis, which is where it belongs, along with these economic and political considerations, but further and more effective action by the President and by the executive agencies would also be a major contribution. As an aside, I would say that if political administrations ever were to fulfill completely political pledges and party promise, the country would be considerably better off.

But before this committee today is the consideration of the Civil Rights Commission's life. I conclude by urging the subcommittee to extend the life of the Commission and in fact to consider favorably a permanent existence that it might cope within its authority with racial conflict that is bound to exist in the United States in the foreseeable future. We in AVC see no advantage in reaching the moon if we cannot solve our problems on earth.

Thank you very much for the opportunity to express the views of the American Veterans Committee on this most vital subject.

Mr. CREECH. Dr. Cooke, in 1957 the Congress was asked to establish the Civil Rights Commission to perform certain functions. Among these were authority to investigate allegations that citizens were being denied the right to vote, to collect information, and to prepare a comprehensive report on these matters by September 9, 1959.

At the same time the Congress established the Civil Rights Commission to undertake this 2-year study and to submit a report, it established the Civil Rights Division in the Department of Justice.

Dr. COOKE. That's right, sir.

Mr. CREECH. In addition to enforcing civil rights statutes, the Civil Rights Division consults with officials of the States in order to promote understanding of civil rights problems, and collects information and seeks effective guarantees and action from local officials and civic leaders.

My question, sir, is: What functions does the Civil Rights Commission render at this time which are not performed by the Civil Rights Division of the Department of Justice?

Dr. COOKE. The holding of the regional hearings and meetings, Mr. Counsel, around the country—

Mr. CREECH. By that do you mean the hearings of the Commission itself?

Dr. COOKE. That's right.

Mr. CREECH. Or the State advisory committees?

Dr. COOKE. I mean the Commission itself and the State advisory committees. For example, in Washington we have had both. We have had the State advisory committee, recognizing, of course, that Washington, D.C., is not a State, but there has been a District of Columbia Advisory Committee, and then the Commission itself held a hearing on housing in April of 1962. Now, I think those two functions that the Commission performed are valuable functions and they are functions which the Civil Rights Division of the U.S. Justice Department does not perform.

Now, I think there are valuable functions performed by the Civil Rights Division. I notice in this Paris paper, *Le Monde*, the report of what Burke Marshall, Mr. Burke Marshall here, the Deputy Assistant—no, Assistant Attorney General in charge of the Civil Rights Division, performed in Birmingham, Ala. This is reported faithfully in the Paris paper, and I think that is an effective function; but in answer to your question, I think they are clear-cut jobs, the assembling of information, the holding of hearings by the advisory committees, by the Commission itself, the assembly of reports of these factfinding hearings—those are valuable services, Mr. Counsel.

Mr. CREECH. Of course the State advisory committees serve without compensation, and of course could be rendering the same service as an adjunct to the Justice Department, inasmuch as they are not employees of the Commission, is that correct? Is that your understanding?

Dr. COOKE. You are asking me whether they could?

Mr. CREECH. Is it your understanding that they could?

Dr. COOKE. I suppose that any Federal agency ought to be able to call on the citizens of the United States to perform certain functions

like this, and we ought to serve without pay. It could take place, in answer to your question.

Mr. CREECH. Mr. Berl Bernhard, the Staff Director of the Civil Rights Commission, has told the subcommittee that one of the reasons for asking for the extended functions of the Civil Rights Commission in the legislation pending today is to enable the Commission to change its emphasis from factfinding to other services. So presumably the Commission has in mind moving away from its factfinding activities.

In your view does it change your feeling about the operation of the Commission to have it move from the so-called factfinding operations?

Dr. COOKE. I see, Mr. Creech, certain services it could render beyond factfinding. For example, I think having found certain facts and reached certain conclusions, it could advise offending agencies, offending parties, of its conclusions. For example, there is little doubt that Levitt, in the Belair Levittown out here in Bowie, Md., refuses to sell houses to Negroes, and there is little doubt that the Commission found as a fact that Bill Levitt refuses to sell to Negroes in Belair, Levittown.

I went out there myself and I asked a salesman, "Would you sell to a Negro?"

The salesman said, "No."

I said, "Would you sell to a dark-skinned African diplomat?"

And he was a little uncertain, but the general position he took, he wouldn't sell to a Negro.

I think when the Commission reaches that conclusion, it could go beyond the factfinding and present that—in this instance, Levitt of the Levittown—and call upon them to end the discrimination, the racial discrimination of which they are practicing in their housing development. So I do see certain functions that the Commission could render that would be valuable beyond factfinding and short of trying to enforce any legislation or trying to enforce any orders for which they have no authority. I say the Department of Justice will do the enforcement.

Mr. CREECH. Of course that is the function of the—

Dr. COOKE. Justice Department and not of the Commission.

Mr. CREECH. But since you place such emphasis on the factfinding aspect of the Commission's work, I wonder what your reaction would be if it moved primarily from factfinding to serving as a clearinghouse or informational type agency.

Dr. COOKE. It would have to do the factfinding, I believe, sir, in order to accomplish the second goal, so I would not be concerned at its failing to do the factfinding. I believe before it could do the clearinghouse, it would have to find facts, reach conclusions—that this is a fact or this is a sound judgment.

Mr. CREECH. Mr. Bernhard has indicated in his statement that they are prepared to move away from this and serve primarily as a clearinghouse or informational type adjunct to the Government.

Dr. COOKE. In S. 1117, page 6, line 7—line 10, rather—is this clause, No. 4 here:

Serve as a national clearinghouse of information, provide advice and technical assistance to Government agencies.

Here it is in the bill. I suppose what Mr. Bernhard was doing—I didn't hear his testimony—was the support of this clause in the S. 1117 before the committee.

Mr. CREECH. Sir, the Congress has been told by the Attorney General of the United States that the Civil Rights Division, in addition to the enforcement of civil rights statutes, undertakes a program of liaison and consultation with law enforcement agencies and other officials of the States in order to promote understanding of the problems and to place the State and Federal responsibilities in their proper perspectives.

The former Assistant Attorney General, Mr. W. W. White, has stated that—I am quoting—"We have in mind the great importance of the collection of far greater information, both factually and legally, in the whole civil rights area. We think that without such activity we cannot do the job," which indicates that the Civil Rights Division of the Justice Department is undertaking its own factfinding activities.

Dr. COOKE. Yes.

Mr. CREECH. And its own informational program, and that the Civil Rights Division of the Justice Department is in daily communication with State and Federal officials throughout the Nation. So my question, sir, is, what authority is the Commission asking for that the Civil Rights Division of the Justice Department does not already have and, indeed, according to testimony of the Attorney General and the former Deputy Attorney General, Mr. White, is already performing?

Dr. COOKE. I think it is a good question that you put, but I believe that the answer rests in the limited responsibility that the Justice Department has in the prosecution of laws, but the U.S. Civil Rights Commission can range beyond simply the prosecution of law because it can provide information to agencies that may not act under the color of a specific law or a prosecution.

For example, it is certainly clear that persuasion is possible in housing, in education, in hospitals, without going to law.

Now, the Justice Department is clearly concerned with prosecution of laws or with the enforcement of laws, but the Civil Rights Commission, by serving as a clearinghouse, by finding facts, can provide information to agencies of the Government and, indeed, to private organizations which can act with the powers of persuasion and not under the color of law. So I see a clear division between the responsibilities of the Civil Rights Division, we will say, of the Justice Department for assembling facts and information to act within their sphere of responsibility. Then let the U.S. Civil Rights Commission assemble information for a broader use than simply prosecution of law.

I don't see any conflict, Mr. Counsel, sir.

Mr. CREECH. Well, you have indicated that you feel that the Justice Department is clearly concerned with the prosecution.

Dr. COOKE. And enforcement.

Mr. CREECH. And that you feel that the factor of persuasion is a very important one, but I should like to ask you, sir, if persuasion is not what the Civil Rights Division of the Justice Department is currently doing.

The Attorney General has told the Congress that at the time the Civil Rights Division was established, the purpose of establishing this division, among other things, was to enforce the civil rights statutes,

to consult with officials of the States in order to promote understanding of civil rights problems, to collect information, seek effective guarantees and actions from local officials and civic leaders.

Certainly the highly publicized work of Mr. Burke Marshall recently in Alabama, would be within the realm of persuasion, would it not?

Dr. COOKE. Yes, it would, and I think it is effective work that he is doing, but still again, it is within the sphere of enforcement of laws. We don't have laws in every area of civil rights.

I would like to see that, but where there are laws, the Civil Rights Division, it seems to me, is effectively acting. In areas where there are not yet law—take, for example, in housing—I believe that the Civil Rights Commission can still serve to find out the facts of the situation, to use powers of persuasion, if it has such authority, to serve as a clearinghouse, where law has not yet come into the picture, and the Civil Rights Division therefore hasn't come into the picture to enforce laws or to prosecute people who have violated laws. So there is still a major area outside of law in this country where civil rights, integration, the end of segregation, is an operable problem and to which attention of the Civil Rights Commission can be directed without duplicating or conflicting with the responsibilities of the Civil Rights Division of the Justice Department.

Mr. CREECH. Well, when you talk about the informational program of the Civil Rights Commission, am I correct in assuming that you do not think of it as a lobbying function?

Dr. COOKE. I would certainly think no; no, sir.

Mr. CREECH. Am I correct in assuming that you would feel that it would be inappropriate for any agency of the Government to be established for a lobbying purpose?

Dr. COOKE. I would think that an agency of the Government has a responsibility to testify before the U.S. Senate and U.S. House. I would never view an agency of the Government as a lobbying agency, no; I wouldn't consider it that. Assuming we mean the same thing by "lobbying," I would not look upon a U.S. agency as to have to register as a lobbyist.

Mr. CREECH. Of course it would not register as a lobbying specialist, presumably. The thrust of my question is to inquire whether you feel it is desirable to have an agency of the Government performing primarily a lobbying function?

Dr. COOKE. I would say no. I cannot see how the Civil Rights Commission, if I—

Mr. CREECH. The reason I ask this question is because it has been reported that the Assistant Attorney General, Mr. Burke Marshall has indicated that he feels that this is the function at the moment of the Civil Rights Commission, and he feels that for this reason, if for none other, the functions of the Commission should be changed. I just wondered if this is your thinking, if this is one reason you feel the functions of the Civil Rights Commission should be changed.

Dr. COOKE. I would have to read his testimony, sir. I would have to see his statement. I would have to see whether this can be equated with your term "lobbying activities." I am not sure that that is the definition of "lobbying activities." I would reserve an answer, Mr. Creech.

I say again, as a general answer, I don't see an executive agency as a lobbying organization. As a general statement I would say that.

But I don't know what Mr. Marshall there intends. I haven't read that statement.

Mr. CREECH. Well, in your view, if there is a duplication of effort by the Civil Rights Division of the Department of Justice and the Civil Rights Commission, would it be desirable for one of these agencies of Government to cease this activity in order that only one agency of Government would be in control of the situation?

Dr. COOKE. Well, in general, Mr. Creech, I don't support any extensive duplication, but sometimes it is not duplication, it is reenforcement and I think today, keynoted and symbolized by last night's murder of Medgar Evers, it may be we would not be harmed in the United States by this amount of duplication between the Justice Department and the Civil Rights Commission. Maybe some duplication by operating through different spheres of activity might be very welcome and very beneficial to the country. I am not going to condemn and disapprove of that amount of duplication that could occur from overlapping of spheres of interest to the extent that you have outlined. I see so much more that the Civil Rights Commission can do that the Justice Department generally should not be doing, that I do not think any limited duplication would be harmful. I think all of us would not want any steady and consistent duplication in the U.S. Government, but here I do not criticize that. I think it may well be helpful.

Mr. CREECH. With regard to the functions of the Commission Mr. Bernhard stated:

We have to continue factfinding—
and then he goes on to say—

but I don't think this would be a prime function, so I think as we decrease factfinding we would increase the other functions, and I do not see that there would be any initial—or I can't contemplate what increase would ever be needed.

Now, that is a direct quote.

Dr. COOKE. Yes.

Mr. CREECH. As I gather from your testimony here this morning, you feel that the factfinding work of the Commission has been its most important work thus far.

Dr. COOKE. And its reports thereon.

Mr. CREECH. And its reports, and that you would feel that the factfinding should be continued, even though Mr. Bernhard, the staff director, has indicated that this will be a diminished function under the new legislation.

Dr. COOKE. I don't know, Mr. Counsel, exactly what Mr. Bernhard had in mind, but it seems to me that if he does the functions in S. 1117, he is going to be doing considerable factfinding. If he appraises the laws and policies of the Federal Government and serves as a national clearinghouse, if he collects and studies information concerning legal developments, and if the Commission investigates the allegations in writing that are made with respect to violation of rights, he is going to be doing considerable factfinding, but apparently from the factfinding will come more use of the information, more judgments, more recommendations, and I do not see that that in any way conflicts with the factfinding which must underly all of this additional function that he recommends. I don't see any serious problem. I am not going to be at all disturbed if he takes on these additional things.

Maybe factfinding, as he says, will not be primarily—will not be a primary operation, but factfinding is going to have to come in all of these assignments which occur on pages 5 and 6 in S. 1117.

I am not disturbed, Mr. Counsel, if he takes additional functions in line with the ultimate goal, which is the elimination of racial discrimination that hit me as a Negro in the U.S. Army in 1945 when I was serving and sought to be an Army officer and was told, "We don't let colored boys," as it was said, "in that branch of the armed services."

I am concerned that he go forth with these Commission services, and I don't feel that factfinding is going to be reduced to the point that I will be disturbed.

Mr. CREECH. Well, now, Dr. Cooke, I should like to inquire, has your organization made a study of the work of the Civil Rights Division and compared it with the work of the Civil Rights Commission?

Dr. COOKE. No, we haven't.

Mr. CREECH. Has your organization been in consultation with officials in either the Civil Rights Division and/or the Civil Rights Commission with regard to duplication of functions?

Dr. COOKE. No, we haven't. We have been in consultation with them on their projects with Berl Bernhard, St. Johns Barrett of the Civil Rights Division; we have been in consultation with him on both discrimination and housing and the *Prince Edward County* case down there in Virginia. We have talked often with Mr. Bernhard, but we have not discussed with him these specific issues which you have raised here.

Mr. CREECH. Well, now, do you feel that if Congress does not agree to expand the functions of the Civil Rights Commission, that it should be continued as it presently operates?

Dr. COOKE. Yes, I do.

Mr. CREECH. I am quoting Mr. Luther Carter's interview with Mr. Burke Marshall, which I presume to be authoritative since there has been no indication that Mr. Marshall has repudiated any of these statements attributed to him.

I believe the Commission needs a new function. After a time I am just not sure it is well to build into the Government a lobby as a permanent body.

Then that was the end of the quotation, and then with reference to the lobby, quoting again: "Making speeches off the Senate floor, so to speak"—which is the end of the quotation.

Now, Mr. Bernhard says, and again I am quoting, that the Commission agrees "to a redefined role to justify its continuance. I think the facts uncovered already about civil rights deprivations provide an ample basis for Federal action."

But in your view, though, even if the functions of the Civil Rights Commission were not extended, it should continue.

Dr. COOKE. Yes, I think just the service, for example, the advisory committee in this city performed shows the value of the Commission right here.

Mr. CREECH. Have you discussed this position with Mr. Bernhard?

Dr. COOKE. No, I think I shall, though.

Mr. CREECH. The reason I asked, is you mentioned you had been in consultation with him.

Dr. COOKE. I think I shall.

Mr. CREECH. Mr. Bernhard has said that if Congress were not to expand the functions of the Commission, that it should permit it to expire. This would not be your view?

Dr. COOKE. No, I think it serves a purpose. I think as Executive Director he may be making a necessarily strong statement for the continuation and extension of it, but I think that it serves a function. But I believe the Congress is going to expand it, though. I think the Congress is going to expand it in light of the present situation in the United States. It is almost mandatory on the Congress to reach the conclusion, I believe, that the Commission needs expansion in its functions.

Mr. CREECH. You have indicated a great interest in the protection of the rights of the individual. I wonder, sir, is it your feeling that when an individual is accused of any action which might result in his being indicted for violation of Federal statute that he should have the right to know his accuser and the right to cross-examine him?

Dr. COOKE. In general, yes.

Mr. CREECH. In general, yes.

Dr. COOKE. Yes.

Mr. CREECH. I see.

Dr. COOKE. I think he ought to be arraigned promptly, too.

Mr. CREECH. Would you say that in any agency of Government in which an individual is asked to give testimony which might result in his being indicted for violation of a law, that he should have the opportunity to confront his accuser?

Dr. COOKE. He certainly should, sir.

Mr. CREECH. And have the right to cross-examination?

Dr. COOKE. Yes, sir.

Mr. CREECH. In any Federal agency?

Dr. COOKE. Yes.

Mr. CREECH. I gather it is your view that the rules of the Civil Rights Commission should be changed to provide for the right of confrontation and cross-examination of witnesses?

Dr. COOKE. In general I think so; yes. I think it has the whole across the board—it can't obtain in one place and not in another, and on these cases of Government security the AVC has taken the position the person has a right to confront his accuser, and I think it has to be across the board. It can't be applied in one place and not in another.

Mr. CREECH. The attorney general of Maine, Mr. Hancock, has told the subcommittee, and I am quoting:

I am basically opposed to a broad delegation of rulemaking power by a legislature to any administrative agency or any commission of this sort. The language used in the two bills is such a broad delegation, in my opinion.

Would you care to comment on that statement?

Dr. COOKE. Well, his general premise seems to be right, Mr. Counsel, but I am not aware that from either of these bills or from the 1957 legislation there is any broad delegation of powers. It has always been a very limited assignment that the Congress has made to the Commission.

I don't see a broad delegation here. I don't know what he refers to. I don't know the specific clause.

Mr. CREECH. I imagine he is referring in part to section 3, item (i), S. 1219, which provides: "the Commission shall have power to

make such rules and regulations as it deems necessary to carry out the purposes of this act."

Dr. COOKE. Isn't that a fairly common phrase, Mr. Counsel, regulations for the Commission to draw up? I am sure sooner or later they would be subject to judicial review.

Mr. CREECH. S. 1117, of course, provides the same type of language. It doesn't mean it hasn't been used before. All I am asking you is to comment on the position of the attorney general of Maine that he feels that this is a broad delegation. I just wonder if this is your view; if you feel that the delegation of rulemaking power by the Federal Congress to any administrative agency or commission should be this broad. I am not saying that it hasn't been done before, and I am not saying also that the rule of the Commission pertaining to confrontation and cross-examination, is unique. It is one which is employed by some other governmental agencies.

Dr. COOKE. I cannot say that I am disturbed by what the attorney general of Maine said. Rulemaking power by these agencies and commissions, it is my understanding, would always be subject to some judicial review if it were raised as being a denial of the rights or an infringement on general practices, that somebody is going to raise it in a court for review, and if it is not raised, one might conclude that the Commission or the agency's rules are not so severe that they need to disturb the attorney general. I don't feel any—or conclude great disturbance about that, Mr. Counsel.

Senator ERVIN. Senator Johnston has to go to another meeting, so he can ask any questions he may have now.

Senator JOHNSTON. I notice here from your testimony that you stress your visit to Germany and to Paris and what you read in the newspapers out there.

Dr. COOKE. Yes.

Senator JOHNSTON. When was that visit made?

Dr. COOKE. That was May 4 through May 17.

Senator JOHNSTON. Of this year?

Dr. COOKE. Yes, of 1963, last month, in other words, sir.

Senator JOHNSTON. Now, did you have occasion to visit in Paris and in Berlin and Germany prior to or during 1956 or prior to that?

Dr. COOKE. No, Senator.

Senator JOHNSTON. You didn't have occasion to visit there. Do you have any reason to believe that if you had been there you wouldn't have read articles in the papers such as you are reading today?

Dr. COOKE. Might well have been the same kind of coverage, Senator.

Senator JOHNSTON. But at that time you did not have the strife and discontent that you have today, did you?

Dr. COOKE. We had some strife and discontent then, Senator.

Senator JOHNSTON. Things were very quiet up until your organization was organized and we put you into existence. I didn't do it, but the Congress did, in 1957, isn't that true?

Dr. COOKE. The Civil Rights Commission?

Senator JOHNSTON. Civil Rights Commission.

Dr. COOKE. No, I would say that there was considerable discontent and concern in the United States about racial equality, Senator, well before 1957.

Senator JOHNSTON. I am talking about what is going on at the present time. You didn't hear of any mobs or running around on the streets prior to your Commission being inaugurated, did you?

Dr. COOKE. Senator, we have had lynchings in the South; those are mobs.

Senator JOHNSTON. You haven't had a lynching in my State in 30 years.

Dr. COOKE. Well, that may be true of South Carolina, but we had the—

Senator JOHNSTON. And very few lynchings. Even up in the North they have lynchings, but they don't string them up, just string them down with bullets, go riding along the streets and do that, so that was happening, too, but those kinds of people were exceptions to the rule, weren't they?

Dr. COOKE. Senator Johnston, I can't agree with you that the inauguration and the establishment of the U.S. Civil Rights Commission in 1957 means that we had any great increase in the United States in the striving for equality. We have had that very steadily. The Supreme Court decision of 1954 was an indication of considerable striving for equality.

Senator JOHNSTON. Do you know anything about human nature?

Dr. COOKE. I hope so, sir.

Senator JOHNSTON. But you do then, when you go in and begin to stir up from the outside in the very States—don't you know you stir up trouble?

Dr. COOKE. Well, there is a considerable stirring up of the people from the inside. Medgar Evers and James Meredith are Mississippians. These people going into the University of Alabama yesterday, they are Alabamians; two people who graduated from the University of Georgia at the commencement last week, those are Georgians. Those are not northerners.

Senator JOHNSTON. But you will say they have been at the head and stirred up the trouble.

Dr. COOKE. I don't think so, sir. I don't think that anybody had to stir in their breasts any feelings for equality. They have it themselves. We don't have to come from the North.

As far as knowing human nature, I would say—

Senator JOHNSTON. You found your race and the white race getting along all right as far as feelings were concerned, and there were no killings between the two and no meeting on the streets and mobs like you have today, isn't that true?

Dr. COOKE. Mr. Senator, they may have been getting along well on the surface, but seething underneath was considerable discontent against discrimination and segregation. I was in the South; I could see it.

Senator JOHNSTON. And your activity stirred it out to the front, then, is that what happened?

Dr. COOKE. I think it came out normally as people began to realize more and more that Negroes were entitled to the same citizenship that other citizens in the United States are entitled to.

I might say, as an aside, that we in the Teachers Union—I happen to be president of the Teachers Union here—hold you in high regard because on many occasions you have come to the aid of the teachers of Washington through the years as a Senator on the District Commit-

tee—the Civil Service Committee—but you have given some considerable thought to the teachers' plight here, so I think we know something about human nature and we know something about our friends. But I would say to you, Senator, that this discontent did not come from northerners. This is a southern thing. These are Negroes in the South who want their equality. They don't want it in 1970. They want it now.

Senator JOHNSTON. I am not talking about equality. I am talking about the fact that you have stirred up the strife between the two races by going into the very States and calling to their attention, publishing it out in the newspapers. You talk about it being in the newspapers in Paris and in Berlin, but you have helped put it there, isn't that true, your organization?

Dr. COOKE. No, I do not agree, Senator, I do not agree at all. I say these things were coming to the fore, and when people seek their equality, there is bound to be some collision if you are going to maintain old principles of segregation in the South; bound to be this collision.

Senator JOHNSTON. Don't you think your race has progressed pretty fast?

Dr. COOKE. In a hundred years? I agree with the President of the United States last night when he noted a century, and I do not think that a hundred years is any acceptable measure of time to conclude that we have made great progress, no.

Senator JOHNSTON. You have been in my State, South Carolina, have you not?

Dr. COOKE. I have, sir; I have.

Senator JOHNSTON. The colored schools have more up-to-date school buildings than the whites; isn't that true?

Dr. COOKE. Well, if it is true, Senator, it is because of the *Clarendon County* case filed in your State seeking to get equality back in the 1940's.

Senator JOHNSTON. Oh, no. Prior to that they floated a hundred million dollar bond in the early 1950's, 1950, and built the school-houses. They didn't wait until then.

Dr. COOKE. But the cases were filed in the 1940's seeking equality. The *Clarendon County* case came up in the 1940's, long before this—

Senator JOHNSTON. Are you an attorney?

Dr. COOKE. No, sir; I am not. I just recall the history of that case. No.

Senator JOHNSTON. But you know what the courts had held up to that time in cases of that kind, don't you?

Dr. COOKE. In general, the separate but equal doctrine had operated, if that is what you mean, sir.

Senator JOHNSTON. Equal facilities, and South Carolina met that, didn't they?

Dr. COOKE. South Carolina made considerable progress toward equality, but equality, in my opinion, has never meant separate but equal. It has meant one school for all the children in the area, not the white children here and the Negro children over there, sir.

Senator JOHNSTON. You mentioned the teachers. Have you heard any complaint in South Carolina about the salaries of teachers of colored or whites in South Carolina?

Dr. COOKE. Except that they are all low, sir. No, I haven't

Senator JOHNSTON. They are all low, that is true; but they all are equal, isn't that true?

Dr. COOKE. Everybody is equally low.

Senator JOHNSTON. They passed a law that made it equal for all teachers in South Carolina.

Dr. COOKE. I do not contest that. I am in agreement with you, but I would like to see the salaries go up considerably more for all those teachers, white and Negro.

Senator JOHNSTON. All those things prove that they were trying to help the colored people, isn't that true?

Dr. COOKE. I don't deny that there was an effort to try to help, Senator. I just say it is too slow and it is too long and it is not enough and a hundred years is a long time.

Senator JOHNSTON. So you think that this Commission, by going into States and stirring around and stirring up helped things?

Dr. COOKE. I do, sir. I don't agree it is stirring up, though. I think it is factfinding.

Senator JOHNSTON. When you factfind where there is heat running on both sides, don't you stir it up a little bit?

Dr. COOKE. It may well be, Senator, that there is going to have to be some stirring up if the Negro and other minority groups are going to get their full citizenship; some stirring up will have to take place.

Senator JOHNSTON. Don't you think if it is left alone probably everything will work itself out beneficial in the long run?

Dr. COOKE. In the long run would be another hundred years, Senator, another hundred years, and I wouldn't agree with another hundred years waiting around for my rights and my children's rights. I can't see it, Senator. Something has to move it along, and I would hope that you would take forward steps in every way you could and the good people of South Carolina to move this along rapidly and steadily and effectively toward equality.

Senator JOHNSTON. I am one who knows that the people in different localities have a little pride in the local government, and they like to be left alone a little bit; they like to have a little bit of State rights, so to speak, and when you interfere with that, you are playing with a dangerous instrumentality.

Dr. COOKE. Well, all I could say to footnote that, Senator, we don't have any rights at all in the District of Columbia. We would like to get a few rights here, and home rule maybe would help us here in the District, but that is aside from the point you are making about States rights. I believe States have certain rights, of course. They do in localities because in effect all of us belong to some locality, but when the States run into conflict with the Federal Constitution and the interpretation by the Supreme Court of the Federal Constitution, I think the States have to give, just as the Governor of Alabama had to give yesterday when they federalized Alabama troops and asked him to step aside on account of Federal order.

Senator JOHNSTON. I can see that you and I just don't agree.

[Laughter.]

Dr. COOKE. Maybe, Senator, I can talk to you later about the teachers' plight in Washington, D.C., and we will reach the agreement that we had back in the forties and the fifties when we had considerable

agreement. May I come to see you on that, and maybe we can agree in that area? We will not agree in civil rights, there is no doubt of that.

Senator JOHNSTON. I am for education and helping it for all races.

Senator ERVIN. Senator Kennedy has no questions.

You are aware that the Supreme Court of the United States held in at least two cases, including the cases within the framework of the *Shelley v. Kraemer* case, that the individuals who own property have a right to continue segregated residential neighborhoods by voluntary action, and there is nothing in the 14th amendment that prohibits their so doing.

Dr. COOKE. Yes. The Supreme Court has simply said that you can't come to the Court and get reinforcement of your covenants, your voluntary agreements.

Senator ERVIN. Therefore Mr. Levitt or any other individual owner of property has the right, as far as the 14th amendment is concerned, to insist that his property should only be used by members of the Caucasian race, doesn't he?

Dr. COOKE. No; I don't agree with that, Senator. So long as he uses my tax money for the development of his project, which he did do, he can't discriminate against me and use my money. I disagree with you, sir, respectfully, but I point out to you that as long as Levitt uses Federal aid of some sort, he can't keep me out under any private agreement.

Senator ERVIN. I will leave Mr. Levitt out of it and talk only about people that don't use tax money. Do you challenge the legal right of any member of any race to select the persons who are to go into his property or persons to whom he is to sell his property?

Dr. COOKE. I challenge it if he opens it up to the public. Then he can't discriminate against me. I do challenge it on that basis.

Senator ERVIN. If he has a restrictive policy about selling it, then he hasn't opened it up to the public.

Dr. COOKE. Sir?

Senator ERVIN. He hasn't opened it up to the public.

Dr. COOKE. Well, it is difficult to see how many of the apartments in the cities or the developments in the country are anything but opened up to the public for sale and lease.

Senator ERVIN. Let's simplify this just a little bit. Does your organization think that the Federal Government should undertake to tell the owner of property to whom they shall rent their property and to whom they shall sell it?

Dr. COOKE. There is such a large area, Senator, where the Federal Government is assisting or the banks are lending, FHA is guaranteeing, VA is guaranteeing, public housing involved in the different localities, the redevelopers of the Nation are using Federal aid, the savings and loan institutions are providing aid to people—there is such an enormous area of aid of that sort to housing, that if the Congress were to crack down just on that, that enormous amount of housing would be opened up to people of all races so that the little old lady who has an apartment house with six units in it and wants to keep somebody out need not be affected by something as broad until possibly the effect of the enormous social change might persuade her into a change.

I don't see that legislation ought to necessarily force someone who has one room to rent.

Senator ERVIN. You think you ought to force them if they have to?

Dr. COOKE. I said I cannot set a specific limit at the moment, Senator, but I do point out that wherever all of these aids of the Government are involved, and President Kennedy's Executive order did not go far enough—it did not include all of these institutions that are lending money—that if both were embraced under the legislation, there would be such an enormous and extensive change in American life that we would accomplish a great deal through that much.

Senator ERVIN. Let's see if we can simplify and reduce the superfluity of conversation at this point. Did you agree with me that the Federal Government ought not to undertake a general policy of trying to tell all property owners to whom they should lease their property and to whom they should sell it?

Dr. COOKE. I do not accept that. I think as a matter of policy the Federal Government ought to say to the people of the United States that they should not discriminate against persons on account of their race or their religion or their color or national origin.

Senator ERVIN. Now, the housing program was set up for the purpose of more adequate housing for the people of America, was it not?

Dr. COOKE. Yes.

Senator ERVIN. It was not set up for the purpose of coercing the association of the races, was it?

Dr. COOKE. Presumably not, sir.

Senator JOHNSTON. But you favor diverting the housing program from its original purpose of providing adequate housing for the people into a program to be used to coerce the involuntary association of the races.

Dr. COOKE. I don't favor that, and I haven't said that, Senator. I simply said that I believe the Federal Government ought to take a position of saying to its citizens that it is not the practice, it is not the belief, it is not the tenet of this country to discriminate against people on account of race or their religion, and this ought to be carried out in housing. That is the position I have taken.

Senator ERVIN. Well, do you take the position that in the implementation of such a policy on the part of the Federal Government the Federal Government should assume the power to tell the owners of such property, even acquired with the aid of Federal loans, whom they should rent to and whom they should sell to?

Dr. COOKE. I do, yes.

Senator ERVIN. All right.

Dr. COOKE. I put it this way, that you tell them who they cannot deny. That is the way I put it, not to tell them who they must—I didn't say they had to sell to Negroes. I said they are to be advised that they cannot deny a piece of housing to a Negro on account of his race.

Senator ERVIN. Well, can you explain to me the precise difference between the Federal Government saying to the owner of an apartment house, "You must rent to B," and saying, "You cannot refuse to rent to B." What is the difference between those things?

Dr. COOKE. Well, there is a clear difference, because the first thing that you are suggesting or you pose there, is that the Government must take a policy, a clear policy, of integration. I didn't say they

had to do that. I simply said the Government had to take a clear policy to instruct its citizens that its position is, "We do not deny a person on account of his race or his creed or his color this house, and you can't deny him this house because he is a Negro." I think there is a difference between that.

Senator ERVIN. So you see a great difference between the Federal Government saying to the owner of an apartment house, "You cannot refuse to rent to B," and "You must rent to B."

Dr. COOKE. Yes, I do. I don't see that the State Department has to say to every Connecticut Avenue apartment house, "You have to have an African diplomat in there." It doesn't say that. It simply says to those Connecticut Avenue apartment houses, "You can't bar that African diplomat or that American Negro on account of his race. There is a clear difference between the two, in my judgment, Senator.

Senator ERVIN. In any case, would your views ever require that the man would rent to a particular person?

Dr. COOKE. No, sir; it doesn't require him to rent to anyone, but it requires him not to discriminate against this person on account of the facts, as I mentioned them.

Senator ERVIN. If he is at liberty to go ahead and rent to whomever he pleases, how is this going to get any housing for members of a minority?

Dr. COOKE. Well, if it is opened up without caveat or restriction. Negroes or African diplomats or Asian foreign policy officers are going to get in there.

Senator ERVIN. Dr. Cooke, don't you think the owner of that apartment house, if he has members of the Caucasian race living there and if he thinks he is going to find it more difficult to keep them if he rents to persons of another race, is going to rent it to the Caucasians?

Dr. COOKE. I don't know. I think if the white man finds he has no place to run, sooner or later he is going to live with the Negro.

Senator ERVIN. But you are going to run him down until he has no place to run; compel him to do so?

Dr. COOKE. Well, I notice even in the integration or ending of segregation in some of the private and parochial schools in the city, the principle of "no island of refuge" was the one that made it work. Just as long as there was somewhere someone might go, maybe the policy will be defeated, but if every private and parochial school is opened alike to Negro, then the policy of integration or nonsegregation is a workable policy.

Senator ERVIN. Well, Judge Parker, who decided the *Clarendon County* case, who had 24 years of judicial experience as opposed to the 8 years of judicial experience prior to their appointment to the Supreme Court of the entire nine judges, who reversed him, said after the case was reversed that the decision did not require integration; but that it merely prohibited discrimination against the person and exclusion on account of his race. Would you say, notwithstanding the fact that the decision doesn't require it, that members of your race should not be permitted to attend a school attended exclusively by them, even though they may wish to do so?

Dr. COOKE. As long as in many of the localities in the South, when a child finishes the eighth grade, and he is a Negro and he is automatically assigned to a Negro high school and the same thing takes

place when a white child finishes the grades and automatically is assigned to a white high school, then it seems to me that even what Judge Parker was saying and what the Supreme Court is saying is defeated because there is either a conscious or unconscious continuation of a segregation pattern in these schools and unless there is some conscious pattern of integration which I am not sure runs counter to what the judge was saying in that circuit court, unless there is some conscious pattern of integration, there is going to be continuing segregation of these schools in the South. So there must be some forward steps on the part of the county school or the local school authorities to take the steps to integrate.

In other words, when these children finish the eighth grade or the seventh grade in a Negro school and the same thing in a white school, there have to be some steps taken to place the children, not according to their race, but maybe according to the locality, geographical locality, or else even what Judge Parker is saying is going to be defeated, much less the Supreme Court.

Senator ERVIN. Judge Parker said these people ought to be allowed to go voluntarily to schools, just the same as they would voluntarily to their respective churches.

Dr. COOKE. Right.

Senator ERVIN. I know you have said that you were in favor of total integration of the races, and you are in favor of bringing about total integration of the races by compulsory processes regardless of the wishes of the people concerned.

Dr. COOKE. That is the general—that is the general statement.

Senator ERVIN. I am glad to have it right. In other words, you think that you can accomplish total integration of races only when the whites have no other place to run?

Dr. COOKE. No, I think that part of it is accomplished when some of the barriers to opportunity and some of the restrictions that established segregation—when they disappear some of the integration takes place, Senator. Just for example, back to those schools. If those school superintendents didn't automatically assign the children on account of race but assigned them rather on account of their residence, some integration is going to take place right there, and I believe that they are maintaining a segregation which is even contrary to Judge Parker's because, as you cited, it would be a voluntary opportunity on the part of the child to choose a school which is denied when he is automatically assigned to a Negro school.

I am saying that some of these areas of integration are going to take place when simply the barriers of segregation are dropped.

Senator ERVIN. No, this is what Judge Parker said, and I quote, 32 Federal Supplement at page 777:

Nothing in the Constitution or in the decision of the Supreme Court takes away from these people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as a result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The 14th amendment is a limitation upon the exercise of power by the State or State agencies, not a limitation upon the freedom of individuals.

Now, if I draw the right inference from your statement, you think the liberty of action which Judge Parker says the Constitution does not take away and the decision does not take away, should be taken away by compulsory laws.

Dr. COOKE. I say, again, Senator, that even what the judge recommended is being denied in certain localities by the enforced and automatic assignment of Negro graduates of primary schools to Negro high schools, that the State is stepping in to enforce segregation, and what the judge recommends—which is a limited movement toward integration—even that is not being accomplished to the schools in the South.

Senator ERVIN. I am not asking you what the judge said. I am asking what you say.

Dr. COOKE. Well, I am saying that what the judge said is partly right, and more must be done. For example, what he has not covered is the use of my tax dollar to enforce segregation, but I think it is an area beyond his decision. I would be opposed to that.

Now, if it means, Senator, that we need legislation that would see that you do not rent your house if you get Federal aid, you cannot discriminate against the Negro, I am for that, because I do not want to be discriminated against.

Senator ERVIN. I am talking to you about schools now.

Dr. COOKE. I moved from schools to housing. I think it is applicable in either case.

Senator ERVIN. I am just trying to make it as simple as I can. Is it your position that compulsory processes of law should be adopted to prevent people of either the Caucasian race or the Negro race from exercising the voluntary rights which Judge Parker says they have?

Dr. COOKE. Wherever the Federal aid is involved, it is my position, Senator, exactly what you are saying, that Federal legislation would prevent the voluntary—

Senator ERVIN. I am not talking about Federal aid. You keep going back to that. I am talking about State schools.

Dr. COOKE. That is in consequence of the Supreme Court decision of 1954, so I would say, yes, I do take that position, yes.

Senator ERVIN. Now, in these so-called sit-in cases, Judge Harlan said in a recent dissent:

Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he see fit, to be irrational, arbitrary, capricious, or even unjust in his personal relations, are things all entitled to a large measure of protection from governmental interference. This liberty would be overridden in the name of equality if these strictures of the amendment were applied to governmental and private action without distinction.

Also inherent in the concept of State action are values of Federalism, a recognition that there are areas of private rights upon which Federal power should not lay a heavy hand, and which should properly be left to the more precise instruments of local authority.

Do you agree or disagree with Judge Harlan's observation as to freedom of individuals to choose their own associates or their neighbors, and to use and dispose of their own property as they see fit, that these are precious rights on which the hands of the Federal Government should not lay heavily?

Dr. COOKE. Certainly there is a general agreement with certain qualifications, Senator. You don't want to invite me to dinner—I think that is your right. You don't have to have lunch with me, certainly I think that is your right. It is my right not to eat with you, too, and I don't think the Federal Government should force us together except when we are in places of public accommodation open to all people, and I don't think they ought to keep you out on account

of your race or me on account of mine, so it seems to me there are qualifications of the Justice's position, and where there are public accommodations involved, then a person doesn't have a right to make a free choice.

Senator ERVIN. In other words, you say that the personal freedoms—

Dr. COOKE. Are limited.

Senator ERVIN (continuing). Should be preserved in private dwelling houses and nowhere else.

Dr. COOKE. No. There are other limited places, but in these public accommodations, personal freedoms can't be preserved. I am very insistent on that. I don't see how in the world you can keep me out of an airport on account of race and provide it for some other person who is white and then say, "Well, the freedom of association of white people is such that they ought to be permitted in this airport and shouldn't have to be bothered with any Negroes." When these public accommodations come up, Senator, it seems to me that the freedom of association is substantially limited.

Senator ERVIN. In other words, your position is that members of each race should still have the right of freedom of association within the confines of their own dwelling houses and nowhere else.

Dr. COOKE. Well, they can have certain meetings, club meetings maybe, small social groups that are not exempt, but the minute that they come to opening their church up to the public I don't think they ought to keep me out. I don't think they ought to keep you out. The minute they begin to serve the public, Senator, then the freedom of association has been partly given up, and I think the Justice may be applying his points to a matter of dwelling place or club or social group, but he couldn't possibly be applying it to a lunch counter in any Peoples' Drugstore in this city. I don't see how he can feel that a person has the freedom of association and can pick his own friends at that lunch counter.

Senator ERVIN. Can you think of any place outside of the four walls of a man's dwelling where you would still allow people to have freedom of association?

Dr. COOKE. There are social clubs that people can set up, determine their own membership. Certainly there are a substantial number of them.

Senator ERVIN. Your opinion is that a businessman ought not be allowed to select his own customers?

Dr. COOKE. Not when he opens up to the public. That is my position, sir.

Senator ERVIN. Well, he doesn't open up to the public unless he invites all the public in.

Dr. COOKE. I think most businessmen would like to have all the public in. I don't know that I am aware of their restriction of the public, unless it is on account of race.

Senator ERVIN. I think they would like to have them in as long as it is economically feasible and socially feasible.

Do you favor the cutting off of the aid to Mississippi?

Dr. COOKE. Sir?

Senator ERVIN. I say, do you think that Federal aid to Mississippi should be cut off?

Dr. COOKE. Well, the State has continued segregation and restricted the use of the funds on account of race.

Senator ERVIN. Well, the recommendation of the Civil Rights Commission talked about all funds in the aggregate.

Dr. COOKE. AVC hasn't taken a position on that, sir.

Senator ERVIN. I just wondered why anybody would advocate cutting off Federal aid to 51,000 dependent Negro children in Mississippi and the Federal aid to 70,000 aged Negroes in Mississippi because of the supposed sins of the public officials of Mississippi.

Dr. COOKE. It may be that the intent is to bring the sins of the, as you use it, public officials very clearly to the fore and possibly might change their acts.

Senator ERVIN. Well, the aid cutoff would have been aid for control of tuberculosis, for cancer, for heart disease, aid for the education of mentally retarded children, aid to the blind, and for the life of me, I cannot see how any person could justify taking such drastic action as that when these mentally retarded children and the people suffering with tuberculosis and cancer and heart disease and these crippled children had nothing to do with setting the policies of the State of Mississippi. I think it is a pretty poor way to enforce the social concepts or legal concepts or anything else to visit the alleged sins of the supposedly guilty upon the innocent.

Dr. COOKE. You make a very persuasive statement, Senator, but sometimes it is necessary to make these dramatic recommendations in order to get some action done in Mississippi and Alabama and other places.

Senator ERVIN. In Mississippi you have 70,440 aged Negroes dependent upon old-age assistance for their shelter, their food, their clothing, their medicine and you have almost 51,000 dependent Negro children dependent upon aid, dependent for their necessities of life. Would you justify cutting off the aid to those people to enforce a social concept upon the public officials of Mississippi?

Dr. COOKE. You mean that the State is not contributing anything to the mentally retarded, to the cancer, and tuberculosis systems? I imagine the State is making some contribution. This is a Federal matching aid or supplementary aid, I imagine.

Senator ERVIN. Yes, it is making a little contribution, and I think if my figures are correct the State is contributing \$3,200,000 and the Federal Government was contributing \$14,933,312 a year. In other words, you would favor cutting off Federal aid to these aged people and to these dependent children and to the mentally retarded children and to the crippled children and to people suffering with tuberculosis and people who are blind, in order to enforce a legal or social or constitutional concept on the official soil of Mississippi.

Dr. COOKE. As I said, Senator, we have not taken a position on that overall elimination. The part that we were concerned with had to do with the elimination of funds from the Federal Government's appropriation to Mississippi with respect to discrimination on the part of the State.

Senator ERVIN. The recommendation you said you supported is the recommendation of the Civil Rights Commission, and the Civil Rights Commission made no distinction between any kind of Federal funds. They didn't even want them to build the moon rocket in Mississippi, and they bemoaned the fact that Federal dollars might be

going into the coffers of the State of Mississippi and into the pockets of the citizens.

Dr. COOKE. I say again, Senator, that it may well be that this is a dramatic recommendation that brings to the fore the need of Mississippi to provide equality for its people.

Senator ERVIN. I was very much grieved to hear you, as the head of an organization of veterans, say that you approved of it.

Dr. COOKE. Well, I shall review this, but I believe that we are going to take a position in support of it of what the Civil Rights Commission did say, Senator. I think that it is necessary to make a strong stand by the Commission to the State of Mississippi to get improvements in the State with regard to the Negro.

Senator ERVIN. You told us about your concern about what people in the United Arab Republic thought.

Dr. COOKE. Yes, one of the questions—

Senator ERVIN (continuing). And in some African nations. Did you give any remonstrance to the people of the United Arab Republic about their racial attitudes?

Dr. COOKE. Well, Mr. Senator, what they said about their racial attitudes were such to welcome the Negro to the—

Senator ERVIN. What did they say about the Jewish people?

Dr. COOKE. Well that is unquestionably a discrimination—a hostility and a friction there between—

Senator ERVIN. Did you tell the people of Africa that they had a little mote in their own eye. Liberia actually forbids—

Dr. COOKE. With respect to the situation in Liberia, no I didn't. We were discussing in this instance the United States and its race problems.

Senator ERVIN. I noticed the other day that somebody connected with the Liberian Government or Embassy was bemoaning racial conditions in this country. Don't you know that in Liberia a member of the Caucasian race can't even become a citizen under any circumstances?

Dr. COOKE. Some reverse discrimination, Senator.

Senator ERVIN. So why do you concern yourself about what the United Arab Republic and the people of Liberia have to say about our conduct?

Dr. COOKE. I concern myself because the Secretary of State concerns himself about the attitude of the nations around the world and the race problem. I think if he knows the effect on American foreign policy of the attitudes of the African nations, the neutral nations, European nations, I think I should be concerned, too, Senator.

Senator ERVIN. Well, I am not very much concerned about the attitude of Liberia.

Dr. COOKE. Let me say one thing and I don't want to prolong this, but Liberia doesn't seek the world leadership. The United States does. You can't seek world leadership with race restrictions, whereas Liberia may very well have discrimination and I am sorry if they do, but Liberia seeks no great place in the sun. It makes a great deal of difference when the United States discriminates and when some small African nation does it.

Senator ERVIN. Have you read all the reports of the Civil Rights Commission?

Dr. COOKE. No, I haven't, Senator.

Senator ERVIN. I wish you would read them and see if you can think of anything that could possibly be suggested in this field that is not already suggested by at least a majority of the Commission. I notice that on most of their crucial recommendations that some of the members, notably Dr. Robert Rankin and Dean Storey recommend exactly the opposite. Rather, they say that some of these recommendations are bad, so whose recommendations are you going to follow when the Commission can't even agree itself?

Dr. COOKE. It is majority recommendation, I assume. Sometimes they are unanimous, Senator, as you know.

Senator ERVIN. Sometimes, and the most crucial ones, are split recommendations.

Dr. COOKE. Let's see. What about the withholding of funds? Wasn't that unanimous?

I think, though, considering they have had southern members, that they have moved along rather impressively together as a Commission rather than as a—I think they have moved along, don't you think so, too, sir?

Senator ERVIN. I think they all agreed about the recommendations about Mississippi but not some others. Judge Storey dissented in regard to the recommendation that the Federal Government undertake to supervise and dictate loans by lending institutions. He and Dr. Rankin, said that banks, citizens and loan associations, and other lending institutions were engaged in business and not in social reforms.

Dr. COOKE. Well, that may well be. All that the restriction would be is to say to the savings and loan institutions, "You can't deny a loan to a person on account of his race." That doesn't mean that the savings and loan institution is participating in social reforms.

Senator ERVIN. In other words, you tell a man he ought to be allowed to deny a loan of his own money to a person on account of anything whatever.

Dr. COOKE. Not if he is getting any assistance with my taxpaying dollar, he shouldn't, and he is.

Senator ERVIN. In other words, you go along with the proposition that the Federal Government should tell these lending institutions to whom they should loan the money.

Dr. COOKE. Once again I say to you, no, I have not said that, I simply have said that the Federal Government tells the institution, "You can't deny a loan to this person on account of his race." I don't think that is telling him to whom he makes a loan. It is simply telling him he can't deny a loan on account of race. I say that again, Senator.

Senator ERVIN. You and I could engage in some semantics a long time, but despite your very great powers of persuasion you leave me in the state where I am incapable of seeing the difference between the Federal Government saying that you must make a loan to A, and you cannot refuse to make a loan to A, that is all.

Thank you very much.

Dr. COOKE. Thank you, Senator.

Mr. CREECH. Mr. Chairman, the next witness is Miss Caroline Ramsay. Miss Ramsay is representing the Women's International League for Peace and Freedom.

Miss RAMSAY. Mr. Chairman, I would like to have Mrs. Stewart, our legislative secretary, with me.

Senator ERVIN. Yes. Your headquarters are on Constitution Avenue, are they not?

Mrs. STEWART. 120 Maryland Avenue NE.; right around the corner next to the Methodist Building.

STATEMENT OF MISS CAROLINE RAMSAY, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM; ACCOMPANIED BY MRS. ANNALEE STEWART, LEGISLATIVE SECRETARY, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

Miss RAMSAY. My name is Caroline Ramsay. I am the legislative assistant of the U.S. Section, Women's International League for Peace and Freedom, whose legislative office is at 120 Maryland Avenue NE. The league is pleased to have the privilege of presenting to your subcommittee its views on the civil rights legislation currently before it. For 48 years our organization has been concerned about civil rights and liberties.

The league, believing that peace in the United States and in the world is inseparable from the protection of individual rights and freedom, is gratified whenever legislation is designed to secure and protect the civil rights of U.S. citizens. The league is encouraged to note that over 100 bills have been introduced on this subject in the 88th Congress which indicates that, if hearings on these bills can be expedited, there may be a better chance than ever before to secure the passage of meaningful civil rights legislation during this session of Congress. This gradual change and progress in the civil rights field, however welcome, does not mean that we have reached perfection. Indeed, the failure to adequately protect the civil rights of our Negro citizens has resulted in shocking reputation among the nations of the world. There is no time to be lost in improving our practice of the democracy we preach.

The league is specifically concerned with the recent events in Mississippi, Alabama, Tennessee, and North Carolina which have shown clearly and tragically how many of our citizens are denied the rights and freedoms guaranteed all Americans by our Constitution. The legislation in this Congress reflects the increasing concern that these rights be safeguarded not only in the South but in other widespread areas of the Nation. As President Kennedy noted in his address at Vanderbilt University on May 18:

* * * a special burden rests on the educated men and women of our country—to reject the temptations of prejudice and violence—and to reaffirm the values of freedom and law on which our free society depends.

The Women's International League for Peace and Freedom believes that broad Federal enforcement powers in civil rights are necessary and imperative to insure equal treatment for all. It is for this reason that we are greatly concerned with the future of the Civil Rights Commission.

The Commission has done its job well in advising the President and Congress on measures needed to protect the American people against all forms of illegal and unconstitutional discrimination. It has held hearings, investigated grievances, and determined the degree of progress in constitutional guarantees throughout the country.

These investigations have resulted in reports concerning voting deprivation and the withholding of equal legal protection in housing, employment practices, schools, and the administration of justice. These reports have elicited a great number of recommendations, many of which have received action by the President, the Department of Justice, and Congress.

In 1959 the Commission recommended the establishment of a system of Federal registrars, empowered to register voters after an Executive determination that citizens had been denied their franchise on racial grounds.

In 1961 the Commission recommended that Congress enact legislation eliminating literacy tests for those with 6 years of formal education.

This year the Commission is preparing reports concerning discrimination in the Armed Forces; the access of minority groups to hospitals constructed under the Hill-Burton Act; on the civil rights of Spanish-speaking citizens; and on the condition of constitutional rights in Mississippi.

Recently the Commission issued an interim report recommending that the President and Congress—

consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State which continues to refuse to abide by the Constitution and laws of the United States; and, further, that the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi, until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States.

In pointing out such weaknesses and failures in carrying out national policy the Commission has performed useful purposes. What must now be determined is the nature of the Commission's factfinding role and whether or not it can be reinterpreted in a way which will enable it to render service of maximum benefit to the country. President Kennedy has pointed out the need for information concerning techniques employed in past solutions of civil rights problems, for a communication forum between contending parties, and for an agency capable of providing advice which will result in peaceful, permanent solutions. This need the Commission is working to meet. Specifically:

1. The Commission's annual education conferences have convened educators throughout the country in an atmosphere where they have been able to share their experiences with desegregation and draw on each other's information and counsel.

2. Throughout the country, State and local authorities, schools and colleges, and the public generally have received Commission reports.

3. The Commission has answered many requests for information from the Congress as well as from agencies and individuals professionally concerned with civil rights. It has participated in governmental and private meetings on civil rights.

4. The Commission has advised the executive branch, as the President indicated in his civil rights message, not only about desirable policy but also administrative techniques needed to make these changes effective. In response to the White House and several Federal agencies the Commission has attempted to provide advice on the substance and administration of civil rights programs.

It is becoming increasingly necessary to permanently assign to some Federal agency these responsibilities. In the North demands are growing for Federal action to deal with school segregation and discrimination in housing and employment. Similar developments are occurring in the southern and border States. A growing number of unions and employers are seeking to implement hiring and training programs based on merit alone. The continued and vocal protest against the exclusion of Negroes from public accommodations suggests the wisdom of a forum in which representatives of business, Government, the clergy, and civil rights organizations may seek means for implementing policies of equal access to such facilities. This type of forum the Commission provides. As Senator Clifford Case of New Jersey has said, it is—

a vital conduit in communication between our citizens. In some cases, our Negro citizens have nowhere else to turn * * *. It is a useful and necessary prool to the executive and the legislative branches, to the conscience of the Nation as a whole.

Thus it seems there is a clear Federal interest in all of these matters and an obvious need that a Federal agency serve as a clearinghouse for information, advice, and assistance on civil rights problems. A strengthened and permanent Commission would have the opportunity to deal with the symptoms of prejudice and tackle its causes rather than limiting itself to its manifestations. Ideally, the league would like to see the Commission become a regulatory agency, empowered to enforce the results of its recommendations with the right of judicial appeal.

This agency should be placed, as the President has suggested, on a fairly stable and permanent basis. Its operation would be stronger and more effective if given longer life. As long as its future remains doubtful the Commission will have trouble recruiting and maintaining the services of high caliber people. The cutback in office operations, necessary in an agency scheduled to end its activities is indeed wasteful if subsequently continued, that agency must reconvene and obtain new staff. The Civil Rights Commission should have sufficient continuity to enable it to perform its services effectively—services which would constitute an affirmative and constructive contribution toward the goal of justice and equal opportunity under law.

Finally, caution should be voiced concerning one argument against a permanent Commission—the reasoning being that permanence yields to pessimism—that it is defaulting to a doomsday philosophy concerning civil rights. It is one thing to hope that we will not need this Commission. The fact remains that during the past 100 years many civil rights problems have not achieved solution. Indeed, the rising expectations of this country's traditionally deprived peoples are increasing and intensifying group tensions. Even if legislation is passed, considerable effort will still be needed to create all the conditions that would make a Civil Rights Commission unnecessary. Its end at this crucial time would gravely impede both Government and private agencies in their work for resolution of racial controversy. Its continuance offers a forum outside partisan politics and the heated emotions of racial conflict for calm, considered discussion and resolution of the difficulties at hand.

In 1960 both Democratic and Republican parties made specific pledges in their platforms to make the Civil Rights Commission a

permanent body. It is imperative that this be done if we are to be sincere in our wishes for equal rights.

We hope that your committee will see fit to consider this legislation favorably, report it out promptly, and work vigorously for its enactment in this session of Congress. Thank you, Mr. Chairman, for the opportunity to present our views on this important legislation, and to your subcommittee which has carried on such extensive work in this field.

Senator ERVIN. We appreciate very much your coming and giving us the benefit of your organization.

That is all. Thank you very much.

Did you have anything Mrs. Stewart to add to what Miss Ramsay said?

Mrs. STEWART. No, I think not. I thought I would come in case any questions were asked about the organization which she might not be able to answer, since she has only recently joined our staff.

We appreciate the opportunity to come before the committee, as this has been a major priority of our organization since its inception.

Senator ERVIN. Thank you.

Mr. CREECH. Mr. Chairman, the next witness is Dr. Pollak.

STATEMENT OF PROF. LOUIS H. POLLACK, CHAIRMAN, CONNECTICUT ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

Senator ERVIN. Dr. Pollak, I wish to welcome you to the committee, and to express our appreciation of your taking the trouble and time to come and give us the benefit of your views on the bills now pending before us.

Mr. POLLAK. Thank you. Thank you, Senator Ervin. I hope you will allow me to disclaim that elegant "Doctor" which Mr. Creech has conferred on me. That is a degree that, as you know, Judge, most poor lawyers are not entitled to claim.

Mr. Chairman, my name is Louis H. Pollak. I come from New Haven, where I teach law at Yale. My field of special interest is constitutional law. Also, I am Chairman of the Connecticut Advisory Committee to the U.S. Commission on Civil Rights.

It is a great privilege for me, I greatly appreciate this opportunity to appear before you, sir, to express my support for S. 1117, Senator Hart's bill to extend the life of the Commission on Civil Rights.

I do want to make it entirely clear at the outset, however, that the views I am expressing here today are solely my own. My views are certainly partly shaped by the work I have had the privilege of participating in as chairman of the Connecticut Advisory Committee, but I am not speaking for my colleagues on the committee, nor, indeed, am I speaking for anyone else.

I would like to say before I address myself to the bill, Mr. Chairman, that I would like to pay my small measure of tribute to the work which this committee does day in and day out in inquiring into the status of constitutional rights in this country. Those who, like myself, are, as it were, laborers in the vineyards of constitutional law have found the hearings and reports of this subcommittee to be of inestimable value. They are essential equipment for all of us, all

Americans, who are concerned with the preservation and advancement of our fundamental rights.

I have long been familiar on paper with the work of the subcommittee. This is the first time I have had a chance to see the subcommittee in person. I am particularly pleased to see that it has, as an addition to its staff, a very able and decorative alumna of my law school, Miss Rosenberg, who I am sure, has added strength to your—

Senator ERVIN. And she is doing a superb job with us.

Mr. POLLAK. I have no doubt of it.

The importance of this subcommittee's day-to-day work makes it in my judgment particularly appropriate that this is the subcommittee which is considering S. 1117 for it seems to me that the achievements of the Commission are really a logical extension within the particular domain of the equal protection of the laws, of the subcommittee's regular pioneering inquiries on so many constitutional frontiers.

I think, just offhand, of the subcommittee's work on the rights of the mentally ill, the rights of the Indian and so forth.

Since its establishment, the Commission on Civil Rights has done really monumental work in exploring and educating the Nation about the areas in which we have thus far failed to fulfill our constitutional commitment to eliminate racial discrimination sustained by law. I think it is not too much to say that the Commission's studies on racial discrimination in voting, housing, education, employment, and justice, now collectively constitute the standard source material which must be the point of departure for any responsible governmental efforts—local as well as national—to alleviate what is surely America's paramount domestic problem.

I need not labor the merits of the Commission's powerful studies—they surely speak for themselves. But I would add one point. The Commission's studies are, in my judgment, a genuinely national product. This seems to me one of their most important characteristics. They are studies that make it plain that racial discrimination is in no sense a regional problem. The forms racial discrimination takes may vary from city to city and State to State, but the phenomenon is nationwide. All must acknowledge that the demonstrations in Birmingham and Jackson have implications which go far beyond the boundaries of Alabama and of Mississippi.

New York, which is the city where I was born, and New Haven, where I now live—these cities have cognate problems; so, too, do Chicago, Philadelphia, Los Angeles, Tallahassee, St. Louis, Baltimore, and Detroit, and many, many other cities in our beleaguered land.

If New Haven's problems are less intense than those of Jackson and less massive than those of Chicago and New York, there is no reason for smugness on our part.

Rather, I think it is reason for sober recognition by those of us who live in the city of New Haven that we have a relatively favorable opportunity to solve these pressing problems, provided that we challenge them directly and responsively, and provided we start no later than now. And I may say at this point, Mr. Chairman, that the citizens of New Haven are particularly proud that their mayor, Richard C. Lee, spoke so forcefully as he did just 2 days ago to the conference of U.S. mayors in Honolulu on just exactly this problem that confronts us today, the problem of the obligation of every American community to move and move thoughtfully and responsibly in the

field of civil rights. This is the kind of leadership that we are accustomed to from Mayor Lee in New Haven.

A principal reason why the Commission on Civil Rights has had such great success in demonstrating the national dimensions of racial discrimination is that the Commission is itself a genuinely national agency. I think it is fair to say that its work has never been allowed to become the vehicle of purely sectional; let alone purely partisan, interests. Both under President Eisenhower and today under President Kennedy, the Commission has been comprised of men of marked ability, vision, objectivity, and independence. Surely the Nation has been enormously fortunate to have been able to draw upon the talents of Americans as distinguished—and I mention at the moment only the incumbent Commissioners—as distinguished as President Hannah, Dean Storey, Father Hesburgh, Dean Griswold, Dean Robinson, and Professor Rankin.

Now, the central purpose of S. 1117 is, of course, the extension of the Commission's existence for 4 years more. That the Commission has more than justified its existence thus far seems to me really wholly beyond argument. Equally beyond argument is the proposition that in 1963, in this centennial year of the Emancipation Proclamation, we are only at the threshold of insuring the civil rights of all Americans.

The Commission has helped all of us to recognize the urgency and the complexity of the problems which lie ahead. Recognition of these problems is surely the essential first step in their solution. But it is only the first step, Mr. Chairman, and so I think we will need the Commission in being for a long, long time to come.

For my own part, I would have no hesitation in recommending to this subcommittee that the Commission on Civil Rights be established as a permanent agency.

But, in any event, extension of the Commission for a period of 4 years seems to me an absolute minimum. I would stress the administrative difficulties under which an executive agency must labor when it operates as this agency has operated on a series of 2-year terms. It is an extraordinary fact that this Commission has, notwithstanding this really crippling limitation, been able to recruit and hold a skilled dedicated and productive staff. This is, I think, a relevant index of the level of administrative leadership provided by the Commissioners and by Berl Bernhard, the very able staff director. And when I speak of the ability of the Commission staff, I want to make it clear, Mr. Chairman, that I am speaking not just at large, but on the basis of my own experience as a chairman of a State advisory committee—my own experience with the very able, thoughtful, courteous, dedicated, outstanding, and full of judgment, if you will, members of the staff of the Commission. But I submit, Mr. Chairman, that to put the Commission on a further 2-year basis could be a mistake in many ways.

It is enormously wasteful, I submit, of the energies of the staff and of the Commission, for these people to have to come as supplicants to Congress at each term of Congress, asking a new lease on life. If Congress really wants the Commission to continue to move forward in these areas of vital responsibility, Congress must give the Commission a tenure which at least approximates the importance of its mandate.

I think I have made it plain that in my judgment the Commission must be continued in being. There is one other particular provision of S. 1117 which I want to address myself to. That is that portion of section 5 of the bill which would authorize the Commission to—

* * * serve as a national clearinghouse for information, and provide service and technical assistance to Government agencies, communities, industries, organizations, or individuals, in respect to equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice.

I wish, Mr. Chairman, to express my strong support for this provision.

The very concept, so it seems to me, the very concept of an educational and advisory program of this sort underscore a very necessary truth, one very important for this country to understand, especially in this period of greatest stress: The achievement of civil rights, the achievement of full civil rights in the United States need not be an endlessly adversary and contentious process. Many battles have been and many more will be fought out in State and Federal agencies and in courts to insure the vindication of constitutional rights, and this is proper in all situations in which those engaged in officially sanctioned discrimination will not mend their ways voluntarily.

But, happily, Mr. Chairman, there have been an increasing number of instances in which responsible leaders—both those holding public office and otherwise—seem ready to address themselves seriously to the solution of, for example, problems of school desegregation or of discrimination in employment or of discrimination in the use of facilities of public accommodation.

President Kennedy, in his talk to the Nation last night, commented on the commendable voluntary advances recently made in many cities, and also commented in praise of those business leaders who he has recently consulted, and who have seemed to show responsible attitudes and a responsive attitude in this area. But in these instances in which there seems to be a fair likelihood of voluntary action not forced on communities by litigation, it seems to me a matter of highest importance to be able to equip responsible leaders with information on how other communities have handled or, indeed, mishandled comparable problems. Thus I would see the Commission as a “national clearinghouse” doing an extremely important educational service in all communities with sense enough to seek such service.

It occurs to me that perhaps I have made a distinction which in one sense overshoots the mark in distinguishing between communities ready to move voluntarily and those pushed by litigation. Even in situations where litigation is necessary to bring to fruition peoples’ legal constitutional rights, there is an enormous range of appropriate consultative work to be done, by the executive branch of the U.S. Government, and I think particularly by the Commission on Civil Rights to help those communities which are under court orders, to proceed forthwith, to desegregate whatever particular facility is involved.

There is, in short, an enormous range of appropriate activity of a consultative nature to be done by such a national clearinghouse as is here contemplated.

Now, I would not say, Mr. Chairman, that the Commission on Civil Rights is the only agency which could be charged with functions of

this kind. I am sure, for instance, that the Department of Health, Education, and Welfare is now possessed of a good deal of knowledge about the kinds of administrative problem which are posed in the course of a bona fide program of school desegregation. There is much, for instance, that the Office of Education in that Department could do to help on a technical level in advising communities engaged in these problems.

Likewise, I have no doubt that the Federal Housing Agencies know a lot about the structure and the impact of the mechanisms which are used to deny Negroes access to residential housing.

Now, such expertise, Mr. Chairman, is all well and good so far as it goes, but I doubt if it goes far enough and this, I think, is the real reason for the clearinghouse provision of section 5 of this bill. I doubt that such expertise goes far enough for the very reason that it is, typically, a kind of expertise, which is expert in its own professional problems and has, at least thus far, I think it is fair to say, acquired no great sophistication in or sense of commitment with respect to problems of civil rights.

This became readily apparent to me on a local level in the course of the work that I have been engaged in during the last several months with the Connecticut Advisory Committee to the Commission on Civil Rights. Our committee has prepared reports on two matters that are of importance in Connecticut, and I venture to think they are important elsewhere, Mr. Chairman. One report deals with limitations on Negro entry into federally subsidized apprenticeship programs. The other report is on what happens to people, both white and Negro, who are relocated pursuant to urban renewal and redevelopment programs—programs which are again, of course, so largely federally financed.

Those of my fellow committee members who prepared the two reports—and I should hasten to interject at this point that the real work was done by others, and my concept of a chairman was to preside and to delegate—those of my fellow committee members who prepared these two reports quickly discovered that the persons whose activities they were carefully studying—relocation officers, supervisors of vocational training, union officials, school guidance officers, et cetera—all too often defined their own competence and job responsibilities in such a limited way as to, in effect, exclude the obligation to foster equality of opportunity.

In short, their outlook generally tended to be quite a parochial one, Mr. Chairman, a parochial one which was geared to their major official concerns, finding people houses, training people to be beauticians, et cetera. There is nothing surprising in this, and I do want to say that I don't mean to be wholly condemnatory of this. It is an entirely understandable bureaucratic form of "first things first."

I'm sure it is the way that I would respond if it were my job to be a guidance official or a union business agent. Well, I am not sure, but I think it is entirely possible, at all events. Anyhow the lesson to be drawn from all this seems to be very clear. If one is really interested in disseminating ideas and information on ways of combating discrimination in various forms of public activity, one should centralize this educational responsibility in that agency which is primarily concerned with civil rights and is therefore ready to devote

real energy to training specialists in all disciplines about the civil rights implications of their jobs.

Now, Mr. Chairman, I think it is appropriate for me to say at this point that I was listening with some attention to Mr. Creech's questions to Dr. Cooke about whether some of these functions could not appropriately be handled by Mr. Burke Marshall, the Assistant Attorney General in charge of the Civil Rights Division.

I am sure much can be done in this office. What astonishes me is the incredible amount that Mr. Marshall and his staff have been able to do in their regular day-to-day responsibilities of litigating. It is clear to all of us, and I think, to the whole Nation, that Mr. Marshall has taken on and taken on very successfully a wide domain of responsibility. I happen to have seen at very nearly firsthand some of the work that Mr. Marshall did in Birmingham. I think it is not too much to say that what Burke Marshall did in Birmingham in helping the Negro leadership and the white business leadership to some sort of peaceful accommodation was an extraordinary national service.

There are few words too high to describe the quality of what Mr. Marshall did. And I am sure that in comparable situations in the future Mr. Marshall will be able again to lend his extraordinary persuasive talents to help mediate disputes of this kind.

But Burke Marshall, for all his talents, is only one man. He is not a program of government, he is not an institution, he is not a system for collecting and disseminating advice. He can operate ad hoc as he did when the situation comes to a boil, but what we need and need desperately, I think, Mr. Chairman, is an agency which systematically every day is in the business of talking to people when they come to it for advice, that collects information and disseminates information, and that is not forced to wait and is not geared to wait until moments of crisis when a Burke Marshall can come in and help in essentially a mediating capacity.

What was needed in Birmingham was to have months and months in advance the services to assist both groups of leaders, the services which in essence are the kinds of services that I would contemplate would be performed by a clearinghouse.

In my judgment, Mr. Chairman, the value, potential value, of such a national clearing house, not only to other agencies of the Federal Government as is contemplated by the bill, but also to local communities as well as to private groups, cannot be too strongly emphasized.

If you will permit me to cite one other homegrown example, if there were such a clearinghouse now in existence, the board of education of my town, the board of education of New Haven, on which I am privileged to sit, would be seeking the advice of such a clearinghouse today. Like many northern and midwestern cities, we have in New Haven instances of a de facto segregation of our schoolchildren. We recognize, as President Kennedy has so very pointedly observed in some of his speeches the last few days, that segregated schooling is an affliction which must be dealt with, must be acknowledged, which we, all public officials, must come to grips with, in the North as well as in the South.

We are not magicians, and we need help in thinking our way through these new and difficult problems.

I have confidence that in New Haven, again because we are gallantly and intelligently led by Mayor Lee—I think we will surmount our

problems because we are going forward to meet them on our own initiative. But all the assistance we can get is too little. We need more and more, and we want this kind of assistance that is contemplated by a bill of this sort.

I am sure that we can get assistance from the very cooperative staff of our Connecticut Civil Rights Commission, which is one of the earliest and best State civil rights agencies in the country. It goes back in time to that early period—I say “early”—just after the war, when other pioneering States, New York, Senator Keating’s State; Massachusetts, Senator Kennedy’s State, were setting up like State agencies.

But these are, excepting New York’s—at least speaking for Connecticut, these are understaffed, devoted but understaffed and underbudgeted groups.

A national clearinghouse, such as that contemplated in this bill, which had collected information not just on what is happening in Connecticut but on dozens of like situations, would be able to furnish comprehensive data to our school board and to similarly situated official bodies all over the country.

I think, Mr. Chairman, that the proposal to locate such a clearinghouse in the Commission on Civil Rights may well turn out to be a governmental innovation of great importance.

Mr. Chairman, I have indicated in a very cursory way, I am afraid, my view about particular provisions of S. 1117. If I may, I would like in closing to return to generalities.

Yesterday, Mr. Chairman, the United States suffered what I can only describe as the degradation of seeing a Governor of a great State, a Governor and onetime judge, George C. Wallace of Alabama, attempt or at the very least go through the forms of attempting, in disregard of the Constitution, in disregard of explicit decrees of a Federal District Court, in disregard of his oath of office, to thwart the admission to the State University of two qualified Negro students. Because the President of the United States promptly and effectively carried out his constitutional obligation to see to it that the laws are faithfully executed, Governor Wallace failed in his would-be lawless act.

Today James Hood and Vivian Malone are duly enrolled students at the University of Alabama, and I may say it is extraordinarily to the credit of the students and faculty of that institution that they displayed, I think, only curiosity about what their Governor was doing, not the kind of hideous obduracy demonstrated in Oxford, Miss., last fall.

What happened at the University of Alabama yesterday in terms of local responsibility, university responsibility, I think, is comparable really to what happened so gratifyingly when Mr. Gantt was admitted to Clemson in Senator Johnston’s State in February.

I think all that Governor Wallace accomplished yesterday was, as Deputy Attorney General Katzenbach so well put it, to put on a show. Certainly he did not succeed in stopping the implementation of the supreme law of the land, the Constitution.

Yesterday evening, Mr. Chairman, President Kennedy spoke to this nation on civil rights. He asked all of us to search our consciences. He asked all of us to join in a nationwide endeavor to demolish those

obstacles of race and color which stand athwart the path of self-fulfillment of some 10 percent of our citizens.

Each of us, the President said, had a role to play, both in his public and in his private life. But, the President said, the obligation to act falls especially heavily on those who hold public office, both local and national, and in this vein the President called on Congress to act quickly and sympathetically on the proposed legislation he will submit next week.

The legislation is supplementary in theme to, though, of course, entirely separable from, the bill which this subcommittee is considering today.

Mr. Chairman, the President in his message yesterday also took occasion to salute those Americans who are laboring in their daily lives, public and private, to fulfill the great American promise of equality.

The President said this, and I quote:

Like our soldiers and sailors in all parts of the world, they are meeting freedom's challenge on the firing line, and I salute them for their honor, their courage.

Now, Mr. Chairman, as we know from prior testimony this morning, at an early hour this morning one man died on the firing line. Medgar Evers, a field secretary of the National Association for the Advancement of Colored People, was shot in the back in Jackson, Miss., just in front of his home, near his wife and children, and he died.

Mr. Chairman, in the name of Medgar Evers, of his wife and of his children, in the name of the Constitution of the United States, and in the name of all that I think all of us feel is of the essence of the American commitment to equality, I call upon this subcommittee to give its strong endorsement to S. 1117.

Senator ERVIN. You have made a very fine presentation of your views.

Mr. POLLAK. Thank you, Mr. Chairman.

Senator ERVIN. I am troubled by the civil rights program in education because I feel that in our zeal for equality, we might wind up destroying a very substantial portion of liberty. We often think of those two terms as being interchangeable and speak so frequently about equality and liberty. My fundamental objection to most civil rights proposals is that they are based on the thesis that in order to secure civil rights for Negroes, we either have to reduce the States to more or less meaningless zeros on the Nation's map or we must deprive all American citizens of what I conceive to be very basic economic and personal and legal rights.

But I will have to confess, you have made a very fine presentation on the other side of the question.

Mr. POLLAK. Thank you, Mr. Chairman.

Senator ERVIN. I wanted to thank you in particular for your comments on the work of the subcommittee. Prior to the time I became chairman, about the only constitutional rights the committee ever seemed to be concerned with were constitutional rights in the racial field. But I have felt that there are some other very significant fields in which something ought to be done with respect to the constitutional rights of Americans, and fortunately the committee has shared my views on that point, and we have tried to do some work, as you know, in the field of constitutional rights of the mentally ill and constitu-

tional rights of the American Indian, constitutional rights of service men, and I am deeply grateful to you and other members of your faculty for your interest in our work and for the assistance that you and they have given us on several occasions.

I recall the fact that you and Mr. Bickel both responded to our requests for your opinion as to some of the bills we had last year and appreciate very much that Mr. Charles Reich came down and made a most illuminating presentation of his views on all the implications involved in wiretapping.

Mr. POLLAK. He described his appearance to me with great pleasure, Judge Ervin, and I knew from what he had told me about his warm reception how much I would appreciate and enjoy the opportunity of appearing before you today.

Senator ERVIN. I look forward to continued cooperation with you and the members of your faculty as we have work in the future.

Mr. POLLAK. We will do all we can, I am sure, to work with your subcommittee.

Mr. CREECH. I have a few questions, if I may.

Professor Pollak, you have indicated that you feel that the Commission should be established as a permanent agency. I wonder, sir, in view of the information which the subcommittee has received during these hearings, whether it is your view that the Commission should be retained as a factfinding agency, very much as it has been operating, supplemented by the increased authority provided under S. 1117, or if you share Mr. Bernhard's view that the Commission in fact would be undertaking more or less a new type of operation, serving primarily as a liaison and clearinghouse operation, thereby taking over the functions presently provided by the Civil Rights Division of the Justice Department.

Mr. POLLAK. Well, Mr. Creech, I think my feeling is really this. The Commission has performed extraordinarily great service so far as an assembler and publisher of facts and it has made, in my judgment, very important proposal to the Congress and to the President and to other agencies as to what the implications of those facts are.

Now, it seems to me entirely appropriate for the Commission to now be asked to move forward into a new phase of activity which I think the clearinghouse idea contemplates.

That doesn't in any sense mean to me that the Commission would have to abandon a factfinding role, but it might well give priority to these other tasks, authority for which is contemplated by section 5. I think we can all agree that the massiveness of the work done by the Commission so far in finding facts in the voting field, education, justice, employment, and so forth, the quantum of the Commission's work is so extraordinary, that it would be, I think, a little foolish to say to the Commission, "Go back and prepare another dozen reports, each of which is 400 pages long and each of which comes up with an extraordinary new mass of information."

There isn't that much more new line of inquiry, I think to be undertaken, though I think it is very important for the Commission to be engaged continuously in supplementing the reports it has already made. I think all of us would probably agree that merely to compare what the Commission had to say in 1959 with what it then said in 1961, for example, in the voting field, showed areas where progress

had been made, areas where progress was not being made. There, in short, one sees the need for a continuing factfinding function to be performed. But I don't feel that it needs to be the central task of the Commission or of its staff, and I suppose the key to my judgment about the fifth section is that, as I understand it, the Commission would be authorized—well, to use the language of the bill, to—

concentrate the performance of its duties on those specified in either paragraph 1, 2, 3, or 4, and may further concentrate the performance of its duties under any such paragraphs on one or more aspects of the duties imposed therein.

In short, it seems to me this bill contemplates remitting to the Commission and to the staff under the Commission's direction the job of determining at any given time and from time to time how much of its energies should be going into finding facts and how much into the clearinghouse—the general dissemination of information kinds—and within those breakdowns to define which substantive areas of interest the Commission should work in.

Mr. CREECH. Professor Pollak, have you studied the operations of the Civil Rights Division of the Justice Department with regard to its program of providing information and liaison and assistance?

Mr. POLLAK. Mr. Creech, I will have to tell you that there I don't think I am very well informed. I have followed with great admiration the Civil Rights Division's litigating work, which it seems to me is extraordinary in dimension and character and thoughtfulness, but I haven't any detailed information on what they have done informally of the kind you are asking about, except, of course, with regard to these widely publicized activities.

Mr. CREECH. So you have not in fact made a study of the Civil Rights Division operations in that regard?

Mr. POLLAK. No.

Mr. CREECH. So you have no knowledge of how the function to be acquired by the Commission would affect or duplicate that presently being performed by the Civil Rights Division?

Mr. POLLAK. No, I am not in a position to make that sort of comparative judgment.

Mr. CREECH. Mr. Bernhard, as Staff Director of the Civil Rights Commission, has reportedly indicated that if Congress does not see fit to expand the authority of the Civil Rights Commission to include the increased authority, such as section 5 which you mentioned, that it should not in his view extend the life of the Commission. Do you share that view?

Mr. POLLAK. I don't think I would share that view, no. I hope that choice won't be before—well, it obviously won't be for me to make—but I don't think I share that because I do think that the Commission continuing as it has been active thus far, can continue to make very important contributions, and I might add that contribution seems to me not merely one of assembling this extraordinary mass of information with the imprimatur of objectivity, integrity, the Commission has, but also that the Commission's periodic proposals as to action to be taken seem to me to be of very great consequence. And I may add that I don't share the concern which I think you, Mr. Chairman, suggested that a proposal which reflects division within the Commission is therefore one that we should take less seriously.

I kind of welcome division when I am getting advice. I think it is fine for Congress to know that Dean Storey, perhaps, disagrees with

Dean Griswold on this or that issue, and I don't think it is of major consequence how many votes there are on each side, just so long as informed and conscientious men regularly take it to be their business to present to the country their views on these major issues of national policy.

Senator ERVIN. I am not a person who complains of dissent. I do a lot of dissenting myself. But my observation just meant that I think they ought to persuade themselves before they undertake to persuade me.

Mr. POLLAK. I think things would be much quieter in your committee halls, Mr. Chairman, if you waited for a consensus to emerge.

Senator ERVIN. Of course I might claim that everything would be better done if everybody entertained the same sound views on all subjects I do, but it would be an awfully dull world if it was that way.

Mr. POLLAK. Well, I may say that comparably it seems to me we have a long history in our administrative agencies of agencies like, for example, the Federal Trade Commission and the Power Commission and the ICC, charged with not only regulatory functions but advice to Congress, a long and honored history in which the members of those Commissions feel free to express their individual views and in which that clash of views is very useful.

Mr. CREECH. Professor Pollak, I was curious to note your statement that if a clearinghouse were presently in existence, that your local board of education in New Haven would have been greatly enhanced in its operation, when in fact there is this facility available through the Civil Rights Division. I wonder if the board of education, which apparently is fairly knowledgeable in the activities of government, is not aware of the activity which the Civil Rights Division is undertaking, especially in view of all the widespread publicity it has received. What assurances would the Congress have that the clearinghouse activity, if it is transferred to the Civil Rights Commission, would be utilized more effectively?

Senator Harrison Williams, who, when he appeared before the subcommittee suggested that field offices should be established, has introduced legislation just recently suggesting that field offices be established to work directly at the community level to organize, to coordinate, full-scale programs to achieve the goals of equal opportunity in the fields of voting, education, housing, et cetera. I would be interested in your views with regard to the recommendations of Senator Williams vis-a-vis those of the administration in calling for the expanded operation of the Civil Rights Commission in this area.

Mr. POLLAK. Well, I am familiar with Senator Williams' proposal only in the sense of having read them quickly in the New York Times. I think it is fairly clear from what I said initially that it seems to me of great importance to have this kind of function centralized in an agency which has as its chief mission a concern for finding out ways of combating racial discrimination.

Now, if Senator Williams contemplates an agency which is concerned with the dissemination of just such information and, in short, we are simply talking about whether the clearinghouse contemplated by section 5 should be inside or outside the Commission on Civil Rights—if that is the only distinction between the two proposals—then I don't think—I can't establish any strong principled position in favor of one rather than the other.

It would seem to me a matter of essentially this, that considerations of efficiency and systematic coordinated policy would indicate that you would want to connect the clearinghouse function with that agency which is systematically exploring the whole range of problems throughout the country.

The clearinghouse, I take it, would be building largely on information gathered or to be gathered by the Commission on Civil Rights. I think you would simply be involving yourself in all sorts of needless liaison problems if you separated those functions.

Now, you have obviously charged me with doing more homework than I seem to have done on behalf of our local agencies, and I will be very anxious to find out whether there is advice in the Justice Department that we can utilize that we are unaware of thus far. But I think until better advised I would like to see the function, which seems to me a very comprehensive one and one not to be confused certainly with sporadic mediation efforts—I would like to see that function centralized in the Commission on Civil Rights. And though I can conceive of the whole function being handled in the Justice Department, I believe—though, as I indicated, I don't claim any detailed knowledge of what Mr. Marshall's Division has done on this score—I believe that the bill contemplates a much more extensive effort than has thus far been made in that direction, just within the confines of the Justice Department.

Mr. CREECH. The Justice Department's efforts, of course, on the basis of the information supplied to the Congress, are not sporadic but are a continuing thing and are available at all times, apparently.

Mr. POLLAK. Involving how many people in the Division?

Mr. CREECH. Well, I can't tell you specifically how many people work on this. The Civil Rights Division, overall operation, including this function, has grown in its appropriation from 1958, when it had its first budget, from something like \$148,000, when it was still a part of the Criminal Division, up to \$768,000 for the present fiscal year. So we see that they have obviously increased their appropriation tremendously; as to how many people they have working specifically in this area and whether they have them working in this area alone, I don't know.

Mr. POLLAK. I, of course, was familiar with the dramatic expansion of the figures, moneys, appropriated for the Division and the number of people working in the Division. It had been my impression that probably the bulk of their energies was devoted to the work which Mr. Doar supervises in the voting litigation area and that of course other sections were devoted to other litigation efforts, and I would be very interested to learn how many people are actually devoting how much time to the kind of efforts contemplated by section 5.

Mr. CREECH. I think that is very worthwhile information, and perhaps when you find it out you would care to make it available as a part of the record.

Mr. POLLAK. I would be delighted to; surely.

Mr. CREECH. All right.

The subcommittee has heard a great deal of discussion about the rules under which the Civil Rights Commission presently operates, and I am certain that you are familiar with *Hannah v. Larche*. I wonder what your view is with regard to the rules of various administrative agencies and commissions pertaining to confrontation and cross examination of accusers.

Mr. POLLAK. Well, I don't exactly know how to comment at large. My biases are all in favor of giving maximum protections to those who are injured or may possibly be injured by testimony, testimony which has at least the impact in the general arena of being in some sense accusatory I think it is fair to say that committees differ, and some behave in exemplary fashion. There have been one or two congressional committees that over the years have not distinguished themselves by the protections they have afforded witnesses or potential witnesses or others simply miscellaneous mentioned in the course of testimony, and of course instances of this kind have characterized some administrative agency proceedings as well.

For my own part, if you are wondering about my judgment on that provision of section 2 of S. 1117, which would provide in section 102(e) for various protections, in instances where a hearing may tend to defame, degrade, or incriminate any person, I think those are very well-advised protections to throw around proceedings of the Commission on Civil Rights. I am glad to endorse movement in that direction.

Mr. CREECH. Would it be your view that any legislation the Congress might enact pertaining to the extension of the Civil Rights Commission should provide for the right of confrontation and cross-examination of accusers?

Mr. POLLAK. When you put the question to me in that general form, Mr. Creech, my answer would be yes, I think it should.

Now, I think we can easily contemplate situations in which problems of timing arise, that you don't want to obstruct the ordinary course of an administrative investigation too much to let a man come in with counsel and get into cross-examination and so forth.

In principle, my answer would be yes, but I would certainly admit that there are—

Mr. CREECH. Would you confine your interest in this area to those instances in which the individual accused might be subjected to prosecution for a Federal crime.

Mr. POLLAK. Well, it would certainly be possible to draw lines like that. Quite frankly, I am not sure that when one is talking about the work of a Commission of this sort it would be useful to so delimit the protections afforded.

For example, when the Commission undertakes hearings, as it has from time to time, investigating alleged unlawful police practices, and if the Commission examines what a particular member of the Los Angeles police force is said to have done, to the extent that the allegations add up to, you know, an accusation of assault under California law, I don't think that I would be satisfied to say, "Well, that police officer isn't entitled to any protection before the Commission on Civil Rights because thus far we haven't gotten to the point of an allegation that adds up to an allegation of a Federal crime."

I think those distinctions would not be wholly salutary ones to make.

I would hope, frankly, that the Commission would employ its rule-making power—a delegation which doesn't trouble me, and you asked, I think, Dr. Cooke about that—as well as on a case-by-case basis, to distinguish between situations where greater degrees of protection might be required.

What I am trying to say is that I think what is proposed in section 2 with respect to protection of somebody who may be degraded or

incriminated by testimony—that should be a minimum statutory mandate by Congress and that the Commission should be encouraged to go further in a particular situation where perhaps presence of counsel or a right of cross-examination would be in order.

Mr. CREECH. Thank you.

Senator ERVIN. I just want to make one observation. It has no reference to anything you have said. I am sure that such results are not desired by sincere advocates of civil rights legislation, but sometimes I feel that all the agitation in these matters and recommendations and things have emphasized rather in general in the minds of many Negroes that they have rights but no responsibilities, and further, that men can legislate their way to a more abundant life. My own opinion is that that can't be done because I think the individual can only acquire a more abundant life by his own exertions and sacrifices, and I feel that sometimes in this field we have a bad psychological impact on a good many people on account of the emphasis upon rights and not too much on responsibilities.

Mr. POLLACK. May I respond to that for one second, Mr. Chairman?

Senator ERVIN. Yes.

Mr. POLLACK. I think I would not depart from you very much on the principles you have suggested, but I am a little concerned about their specific application.

Over the course of many years I have had the opportunity to work very closely with a good many of the major Negro leaders, including men like Thurgood Marshall, now a Federal judge, Roy Wilkins, Martin Luther King, Ralph Abernathy, and in Birmingham last month I had the good fortune of meeting some of the chief lieutenants of Reverend King and Reverend Abernathy. I am thinking of men like Rev. Andrew Young and Rev. Vincent Harding, and I think, Mr. Chairman, that the quality of responsibility of judgment, of concern, not just for claims of right, but for creating a climate in which people can live responsibly together in the freedom that America was meant to give and I think, will give us all—I think this quality of responsibility is what most characterizes these leaders with whom I am really quite well acquainted by now.

I think this is a very important thing. If there is any question in anybody's mind on this score, I think it is a very important thing to "nail down" flatly in the record. I think none of us is interested, if we really think about it, in a country where we only make claims of right and have no sense of belonging to a community. My own judgment, Senator, is that the Negro leadership in the United States and the Negro citizens of the United States probably know this better than any of the rest of us because they have suffered and suffered and suffered, not only in the years of slavery, but in the century of non-fulfillment of constitutional promises which has followed the Emancipation Proclamation.

It is this quality of patience and the correlative quality of responsibility that I really think the hallmark of Negro protest in this country, and I think we need—we whites, when I say "we"—we whites who are still the majority in this country, in trying to design an American community, the law of which knows no racial dimension, I think we need have no doubt that if we move in good faith and responsibly we will be met with at least as good faith and as great

a measure of responsibility and with no illusions about legislating heaven on earth on the part of the Negro leadership.

Senator ERVIN. I didn't mean to imply that I charged that any leaders intended any such situation, but I do feel that in the minds of many people that that has been the psychological result.

Thank you very much.

Mr. POLLAK. Thank you very much, Mr. Chairman.

(Whereupon, at 1:30 p.m., the subcommittee recessed, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

Senator ERVIN (presiding). The subcommittee will come to order. Mr. Creech will call the first witness.

Mr. CREECH. Mr. Chairman, the first witness is Mr. Charles Bloch, attorney, of Macon, Ga.

STATEMENT OF CHARLES BLOCH, ATTORNEY, MACON, GA.

Mr. BLOCH. Mr. Chairman, and gentlemen, I have had the opportunity to read S. 1219 and S. 1117.

I have been more or less familiar with the Commission on Civil Rights since its creation in 1957. I testified in the hearings which were had in early 1957 prior to its creation. And I believe that it was for those reasons that I was invited to appear here today.

I believe now even more strongly than I did then that the Commission is not an impartial one. Apparently no one is appointed as a member of it unless his views are known to be slanted toward so-called "liberalism." This vice is not cured by the provision in the act that "not more than three of the members shall at any one time be of the same party" because there are "liberals" in both parties. If I had had any doubt of that, that doubt would have been removed by a program which I saw and heard May 28, 1963, as a part of the "Today" program, in which the Senator from New York, Mr. Javits, and the Senator from Michigan, Mr. Hart, participated.

There ought to be some way of assuring "conservatives" representation on the Commission if it is to be perpetuated. The statute now provides that the Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. The only restriction is the one as to party affiliation.

The Congressional Directory of the 85th Congress, January 1958, shows the composition of the Commission as follows:

The chairmanship at that time was vacant.

Vice Chairman: John A. Hannah of Michigan.

Members: John S. Battle, of Virginia; the Reverend Theodore M. Hesburgh, of Indiana; Robert G. Storey, of Texas; and J. Ernest Wilkins, of Illinois.

By March 1959, Mr. Hannah had become Chairman, Mr. Storey Vice Chairman, Mr. Battle and Reverend Hesburgh were still members, and Mr. Doyle E. Carlton, of Florida, had become a member.

In January 1960, all of these gentlemen remained, and there was also Mr. George M. Johnson of Washington, D.C.

In April 1961, Messrs. Hannah, Storey, Carlton, and Reverend Hesburgh remained; there was a new member, Mr. Robert S. Rankin of Durham, N.C.

In January 1962, the composition was Chairman Hannah; Vice Chairman Storey; Commissioners: Reverend Hesburgh; Mr. Spottswood W. Robison III, of Howard University Law School in Washington; Dean Erwin N. Griswold, Harvard University Law School; and Mr. Robert S. Rankin.

The March 1963 issue of the Congressional Directory gives the same membership.

Volume 31, "Who's Who in America," reveals that Chairman Hannah is president of Michigan State University; Mr. Storey, a former president of the American Bar Association, is a resident of Dallas, Tex., and dean of the Law School, Southern Methodist University; Reverend Hesburgh is president of the University of Notre Dame; Mr. Robinson is not listed, but I recall that he was of counsel for the NAACP in a number of cases; Dean Griswold is dean of the Harvard Law School; Mr. Rankin is professor of political science, Duke University.

I have read with a great deal of interest a speech made by Dean Griswold at the University of Utah on February 27, 1963, entitled, "Absolute Is in the Dark."

In the course of it, he said:

Though we have a considerable cultural heritage, there have always been minority groups in our country. This, I am sure, has been healthy and educational for all concerned. We have surely gained from having a less homogeneous population. Of course, the rights of all, especially those of minorities, must be protected and preserved. But does that require that the majority, where there is such a majority, must give up its cultural heritage and tradition? Why?

I express the hope that if this Commission is perpetuated the composition of it will be such that more than lipservice is given to studying and answering the two questions which Dean Griswold propounded. And I express the hope, too, that the Commission will study the question of who is choosing the sites for the various demonstrations which are going on in various parts of the country and who is furnishing the money to defray the expense of those demonstrations.

I read in a newspaper a few weeks ago a headline that stated that the demonstrations in Birmingham, Ala., up to that time had cost \$300,000—it cost those putting them on that much money, and I wondered, as I read that article, who was putting up that tremendous amount of money and why. And it seemed to me that if this Commission is to be perpetuated by the Congress of the United States that one of the subjects that it could well investigate would be the reason—the real reason for those demonstrations, who chooses their locality and why; and above all, who is paying the freight.

A famous Georgia lawyer once said:

It is the clash of mind upon mind which causes the spark of truth to scintillate.

There can be little clashing of mind upon mind when the same basic ideas are ingrained in all of them.

Someone whose basic ideas are diametrically opposed to those of Mr. Robinson might by expressing them place before brilliant men such as those who compose the Commission aspects of their problems which had not previously occurred to them.

The points of view and experience of the presidents of Michigan State University, the University of Notre Dame, of the dean of the Harvard Law School, are necessarily different from those who have spend their lives in the States of the South.

Under these bills, additional duties are given to the Commission including its serving as a national clearinghouse for furnishing advice, information and technical assistance with respect to equal protection of the laws to private or public agencies requesting such service.

If this additional duty or power should be delegated to the Commission by the Congress, it is all the more important that the Congress should seek to insure impartiality, and advice, information and assistance which heeds the fact that there is more than one side to "equal protection of the laws." The doctrine of obedience to "the law of the land" should be taught to all citizens—those of the North, East, and West, as well as those of the South, and to Negroes as well as whites.

The vices the statute was creating were cogently pointed out by Justices Douglas and Black, dissenting in *Hannah v. Larche*, 363 U.S. 493, et seq., and those vices still persist. And now Congress has the chance to correct those vices.

The dissenting opinion written by Mr. Justice Douglas commences:

The cause which the majority opinion services is, on the surface, one which a person dedicated to constitutional principles could not question.

The "cause" is the right to vote protected by the 15th amendment. The Justice said:

By democratic values this right is fundamental, for the very existence of government dedicated to the concept "of the people, by the people, for the people," to use Lincoln's words, depends on the franchise.

Yet important as these civil rights are, it will not do to sacrifice other civil rights in order to protect them. We live and work under a Constitution. The temptation of many men of good will is to cut corners, take shortcuts, and reach the desired end regardless of the means.

If Justice Douglas had considered not only the "temptation of many men of good will," but the aims and desires of some who are not "of good will" he would have pierced the heart of the matter, and laid bare the harm in this legislation.

Even with his limited approach, he exposes some of the evils. Said he:

First, it is the Commission's judgment, not the suspect's, that determines whether the hearing shall be secret or public. Thus this procedure has one of the evils protested against in *In re Groban*, 352 U.S. 330, 337, 348-353; (dissenting opinion). * * * The secrecy of the inquisition only underlines its inherent vices: "Secret inquisitions are dangerous things justly feared by freemen everywhere. They are the breeding place for arbitrary misuse of official power. They are often the beginning of tyranny as well as indispensable instruments, for its survival. Modern as well as ancient history bears witness that both innocent and guilty have been seized by officers of the State and whisked away for secret interrogation or worse until the groundwork has been securely laid for their inevitable conviction." * * * As said in dissent in *Anonymous v. Baker* (360 U.S. 287, 299), * * * "secretly compelled testimony does not lose its highly dangerous potentialities merely because it is taken in preliminary proceedings." Second, the procedure seems to me patently unconstitutional whether the hearing is public or secret * * *.

And I want to interpolate, Mr. Chairman, another quotation from Mr. Justice Douglas in the same volume, at page 500, 363 U.S. He says:

The Civil Rights Commission, it is true, returns no indictment. Yet in a real sense the hearings on charges that a registrar has committed a Federal offense are a trial. Moreover, these hearings before the Commission may be televised or broadcast on the radio. In our day we have seen congressional committees probing into alleged criminal conduct of witnesses appearing on the television screen. This is in reality a trial in which the whole Nation sits as a jury. Their

verdict does not send men to prison. But it often condemns men or produces evidence to convict and even saturates the Nation with prejudice against an accused, so that a fair trial may be impossible. As stated in 37 American Bar Association Journal, page 392, 1951, "If several million television viewers see and hear a politician, a businessman, or a movie actor subjected to searching interrogation without ever having an opportunity to cross-examine his accusers or to offer evidence in his own support, that man will stand convicted or, at least, seriously compromised, in the public mind, whatever the later formal findings may be. The use of this procedure puts in jeopardy our traditional concept of the way men should be tried and replaces it with a new concept of guilt based on inquisitorial devices."

And on page 502:

The right to know the claims asserted against one and to contest them, to be heard, to conduct a cross-examination, these are all implicit in our concept of a full and fair hearing before any administrative agency as the court in *Morgan v. The United States*, 304, U.S., page 1 to page 18 emphasized. We spoke there in the context of civil litigation where property was at stake. Here the need for all of the protective devices of a fair hearing is greater. For one's job and, perhaps, his liberty are hinged on the hearings.

My attention has been called today to a letter which was sent to the chairman of this subcommittee from the American Law Division of the Library of Congress on the subject of administrative procedure, "The right of representation and cross-examination in hearings before the Civil Rights Commission and other agencies of Government."

I had the opportunity of reading this this morning and it occurred to me that it had a strangely familiar note, and the familiarity was due to the fact, apparently, that what the author has done is to digest a table which is appended in *Hannah v. Larche*, pages 454, et sequitor, 363 U.S., and he has digested what is shown in detail in those tables. And it is of particular interest at this juncture because Mr. Justice Douglas paid his respects to that argument of the majority in *Hannah v. Larche* at page 504 of his dissent, which also is in 363 U.S., where he said this:

References are made to Federal statutes governing numerous administrative agencies, such as the Federal Trade Commission and the Securities and Exchange Commission, and the inference is that what is done in this case can be done there. This comes as a surprise to one who for some years was engaged in those administrative investigations. No effort was ever made, so far as I am aware, to compel a person charged with violating a Federal law to run the gauntlet of a hearing over his objections. No objection based either on the ground now advanced or on the fifth amendment was, so far as I know, ever overruled. Investigations were made, and they were searching. Such evidence of law violations as were obtained were turned over to the Department of Justice. But never before, I believe, has a Federal executive agency attempted, over the objections of an accused, to force him through a hearing to determine whether he has violated a Federal law. If it did, the action was lawless, and courts should have granted relief.

That is the end of the quotation from Mr. Justice Douglas as it appears at pages 504 and 505 of 363 U.S.

I had an opportunity this morning as I was sitting here to give some thought to the fact that, in the civil rights field, when cases come before the courts in the so-called civil rights field, there seems to be a different set of rules of law applied from those which applied in the ordinary run of cases. I will illustrate that by one illustration.

In 360 U.S., there is the case of *Anonymous v. Baker*, which was referred to in Mr. Justice Douglas' dissent. In *Anonymous v. Baker* the opinion was written by Mr. Justice Harlan, I believe—yes, by Mr.

Justice Harlan, and the head note states clearly what the nature of the case was:

Appellants who are licensed private detectives and private investigators, but not attorneys, were convicted of contempt for refusal to answer pertinent questions put to them as witnesses summoned before a New York judge who, pursuant to court order, was conducting a nonadversary, nonprosecutorial, preliminary factfinding inquiry, analogous to a grand jury proceeding, into alleged unethical practices of attorneys and other acting in concert with them. The appellants did not plead the stated privilege against self-incrimination, but based their refusal to testify solely on the fact that their counsel was required to remain outside of the hearing room while they were being interrogated, though the judge had expressed his readiness to suspend the questioning whenever appellants wished to consult with their counsel. It was customary for such proceedings to be kept secret like grand jury proceedings, and this practice was sanctioned by New York statute and by the court order authorizing the inquiry.

And the court by a majority of 5 to 4 held, since the validity under the Federal Constitution of the State statute pertaining to such proceedings was not drawn into question or passed upon by the State courts in this case, the court lacked jurisdiction of the appeal under 28 U.S.C., 1257(2). Certiorari was granted and by a vote of 5 to 4 upheld the sequestration of counsel.

But the important feature of it is that the four who dissented in *Anonymous v. Baker*, also, were the four who dissented in *Groban*, and the dissenting opinion written by Mr. Justice Black, with whom the Chief Justice, Mr. Warren, Mr. Justice Douglas, and Mr. Justice Brennan concurred, commences:

In re *Groban*, 353 U.S. 330, decided 2 years ago, upheld as constitutional the action of a State fire marshal in compelling persons suspected of burning a building to testify about the fire in secret and without benefit of the presence of their counsel. Four of us dissented on the grounds that such secret inquisitions violated the due process clause of the 14th amendment.

Mind you, Mr. Chairman, the four who dissented in 1956 and in 1958 in the *Baker* case and in the *Groban* case were Justice Black, Chief Justice Warren, Justice Douglas, and Justice Brennan, and the ground of dissent was that such secret inquisition violated the due process clause of the 14th amendment. Yet, when *Hannah v. Laroche* came along, a couple of years later, in the October term, 1959—decided June 20, 1960—just about 2 years later—the opinion was written by the Chief Justice, concurred in by all of the Justices, including Justice Brennan, except Justice Black and Justice Douglas, and the Chief Justice did “not find it necessary to discuss either of those cases.” They are alluded to by the Chief Justice only in a footnote (note 31, p. 451).

Senator ERVIN. If I may interrupt at this point, I have, also, been bothered by another one of his opinions, as compared to the *Hannah* case. Of course, in the Chief Justice's decision in the *Watkins* case he pointed out how solicitous the members of the congressional committees, who were investigating the situation to determine whether legislation was needed, must be to appraise the witness as to the relevancy of the evidence, as to their objective. And when I read that case, the *Watkins* case, in the light of the *Hannah* case, I reached the conclusion that the Chief Justice said in the *Hannah* case that Congress had conferred upon the Civil Rights Commission more drastic investigatory powers than the Court held that Congress itself possessed under the Constitution in the *Watkins* case.

Mr. BROCH. He does rather seek to distinguish the *Watkins* case, but I could not quite get the distinction that he sought to make, but

it is a rather strange situation holding that the agent, acting under delegated power, has more power than the principal, with the comprehensive power delegated to it under the Constitution of the United States to enact legislation. All legislative powers are vested, of course, under the Constitution of the United States in the Congress. And you have a rather peculiar situation of being possessed with all of those legislative powers, but still you do not have as great a power as that which is delegated to a subsidiary.

In this same letter, addressed to the chairman, is a statement that the Congress is not required under the principles of constitutional law to grant those rights for which I plead to people who have to appear before this Commission or its subcommittees or its committees. Well, I think it is required to. And if, when the Court comes to consider *Hannah v. Larche* in the light of the whole history of the subject, particularly what the chairman of this committee has just pointed out, I believe they would decide that the same rules apply in cases arising under the Civil Rights Commission Act as in the cases involved in the statutes involved in *Anonymous v. Baker* and in *re Groban*, but assume, for the sake of argument, that Congress is not required—and I underscore “required”—suppose that Congress is not required to do it, is there any reason why the Congress should not do it, even though it may not be absolutely required by the Constitution of the United States? Certainly, it is a doubtful question when the Court has voted 5 to 4 twice on it and 7 to 2 another time on it. Certainly, justice would be done by placing those provisions in the act if it was passed, so that it is not strictly a question of whether you have got to do it or whether you have not got to do it. It is a question of what is fair. And that is intensified by the fact that—

Senator ERVIN. Has not long experience of Anglo-American law demonstrated beyond all question that the only way you can have anything in the nature of a sure test as to the truthfulness of the testimony of a witness is that he be subjected to cross-examination by any party who is adversely affected by his testimony?

Mr. BLOCH. Yes, sir; that is the purpose of what the statutes now state, in all of the States, and they call it the right of a thorough, sifting cross-examination. It is thorough and insistent cross-examination which reveals the truth.

Senator ERVIN. And about the only way you can distinguish between credibility of a witness, to determine whether he is an Ananias or a George Washington, is to have him subjected to cross-examination, is that not true?

Mr. BLOCH. Yes, sir. All of us who have ever tried lawsuits know that. You have seen it in your trial of cases. Certainly. I have, and certainly every other lawyer has who has ever tried them or witnessed them tried. The truth is not known until the cross-examination is over and sometimes it is not known then but, certainly, it is not known until there has been cross-examination.

What I am pleading for is revealed by another decision of the Supreme Court of the United States just a month ago today, May 13, 1963. Seven of the nine Justices concurred in reversing the judgment of the Court of Appeals of New York in the case of *Willner v. Committee on Character and Fitness*.

Mr. Justice Douglas wrote the majority there.

We have emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood. See *Greene v. McElroy*, 360 U.S. 474, 492, 496, 497, and cases cited * * * We think the need for confrontation is a necessary conclusion from the requirements of due process in a situation such as this (31 L.W. 4440-1).

If it is a necessary conclusion there, why not here in this legislation you are preparing?

I had this sentence in my notes, in my manuscript, which states just exactly the thought that the chairman pointed out a while ago.

Truth does not fear to face those whom it accuses, and truth can endure the acid test of cross-examination.

The fallacy in the argument made 6 years ago at the genesis of this legislation has long since been demonstrated. It was argued then that those of so-called minority groups would suffer harm if they publicly accused those who composed the so-called power structure.

If any such fear ever existed, it has ceased to exist. If there was ever any reason for the abandonment of constitutional principles in this legislation, that reason has ceased to exist.

Almost 80 years ago, October 15, 1883, the Supreme Court decided a group of cases known as the *Civil Rights* cases (109 U.S. 3). In the course of the opinion, Justice Bradley (of New Jersey, I believe) writing for the Court inscribed these words which should be read and considered by all who have the responsibility of preparing legislation which will form a code of conduct for all citizens:

When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.

Those are the words of Justice Bradley of New Jersey—not mine. If that advice was sound fourscore years ago, 15 years after the adoption of the 14th amendment, is it not a hundredfold more sound today?

All that we ask is: In your zeal to protect the constitutional rights of a few, do not destroy that Constitution which is the salvation of all.

In conclusion, Mr. Chairman, I am not, of course, in favor of the extension of the life of the Commission. I do not think 6 years ago that it was necessary in our Government with the Department of Justice that we have, and with zealous men working in the Civil Rights Division of the Department of Justice. I have not devoted any part of my prepared statement to that which would be a repetition of the argument made 6 years ago and again 4 years ago, I believe, but if it is to be perpetuated, if it is to become a clearinghouse, then let it be a clearinghouse guided by the same principle of constitutional law which govern other clearinghouses and other agencies of our Government.

Senator ERVIN. You take the position, in other words, that even if Congress sees fit to extend the life of the Civil Rights Commission, that Congress ought to have sufficient devotion to the history which has given rise to our great rights and to the fundamental principles involved in the search of truth to amend the law so as not to permit

the Civil Rights Commission to operate like a star chamber in taking the evidence of public officials on charges of wrongdoing. This is how they presently operate, they deny these witnesses advance notice of the charges against them and an opportunity to confront and cross-examine those who make the charges.

Mr. BLOCH. That is right.

Senator ERVIN. And does not the decision which the Supreme Court held constitutional by a split decision in the *Hannah* case even go beyond the star chamber procedure in that it even denies the one who is being investigated to know the identity of those who have action taken against them?

Mr. BLOCH. Yes. As an example of that I thought as I sat here this morning I cannot see any difference between the proceedings of the Civil Rights Commission as presently constituted and the one-man grand jury they had in Michigan some years ago. I remember a case along the lines that we are discussing here, decided by the Supreme Court of the United States, the *Oliver* case I think is the name of it, 333 U.S. 257, which dealt thoroughly and specifically with the rights of the person who appeared before that Michigan one-man grand jury.

Senator ERVIN. I am glad you called the attention of the committee to the Civil Rights cases of 1883, where the Supreme Court struck down the Civil Rights Act of 1875 which gave to all people what they now call free access to accommodations in hotels and motels and things of that character. The Court said:

When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.

I have often said, and I would like to ask you if you concur in this view, that that sentence is an absolutely correct analysis, not only of the civil rights laws under consideration but of all of these civil rights bills we have had in recent years, in that all of these bills are an attempt to pick out certain citizens from among all other American citizens, solely upon the basis of their race, and to make them a special favorite of the laws and to excuse them from having to litigate their controversies with the same laws by which all other peoples' controversies are litigated—is that not a correct analysis of these bills?

Mr. BLOCH. For that special class minority or majority, whatever it may be, it is a special class, for the Government of the United States will do the litigating.

Senator ERVIN. As a matter of fact, this request to be made a special favorite of the laws, to be excused from having their rights litigated in the same manner as other men's rights are litigated, really is not being made for the people who would benefit from this great special privilege. As a rule, it is made only by some of our leaders, men who seem to be their leaders, and by some politicians and by some very sincere and misguided people in other vocations of life.

Mr. BLOCH. That has been my experience.

Senator ERVIN. I think that you have a remarkable statement here at the close of your statement, Mr. Bloch, at page 9, where you say:

All that we ask is: In your zeal to protect the constitutional rights of a few, do not destroy that Constitution which is the salvation of all.

I would hate to think that what we call the American dream cannot be realized without destroying basic economic personal and legal rights of all Americans, and yet these proposals all contemplate doing that very thing; do they not?

Mr. BLOCH. Yes.

Senator ERVIN. Now, for example, do you know of any law that gives one man a civil right that allows another man to occupy his rental property?

Mr. BLOCH. No, sir.

Senator ERVIN. Do you know of any law that gives any man the civil right to demand that a particular property owner shall be compelled to sell him that property, instead of making the sale to some other person?

Mr. BLOCH. There is no such law.

Senator ERVIN. And yet that is what this Civil Rights Commission recommended, that a system of that kind be set up for the District of Columbia to be binding upon property owners.

Mr. BLOCH. I have heard that it has. I have not seen it in print. I have heard that, but I have not read any bulletin about it, nor have I seen an authentic news dispatch about it, but I have heard of it.

Senator ERVIN. It also recommended the adoption of a law which would deprive a real estate agent of the right to pursue his occupation and to earn a livelihood if he carried out the direction of the owner of the residential property in the District of Columbia that he sell the property to a man of a particular race.

Mr. BLOCH. Well, there is not any law for it.

Senator ERVIN. And has it not been the American doctrine that economic freedom gave a man the right to make the determination as to who was to use his property and to whom he would sell his property?

Mr. BLOCH. That has always been my idea of the underlying thought behind the private ownership of property. You do not own it unless there is a necessary concomitant to that ownership—you have the right of disposal, to whom you please, when you please and for what price you please.

Senator ERVIN. And am I correct then in my recollection that the court in construing the due process clause said that the provision of the due process clause to which they were referring guarantees that no man should be deprived of his life, liberty, or property without due process of law and prevents them from being deprived of any of the essential indicia of ownership of the property such as the right to determine how this property should be used, as long as it is not used to the detriment of the public.

Mr. BLOCH. That is correct. That has been read into the due process clause as the liberty of contract.

Senator ERVIN. My attention has just been called to an editorial which appeared in the Wall Street Journal of yesterday. This observation is made with reference to the statements of Dr. Cooke whom we heard this morning. The Wall Street Journal says:

Imagine, for example, a law that would literally demolish segregation in housing. To work at all, it would have to be a law of such ferocious coercion that we would no longer have a free society for any citizen.

Do you agree with that?

Mr. BLOCH. Yes, sir.

Senator ERVIN. With that observation of the editorial writer?

Mr. BLOCH. Yes, sir.

Senator ERVIN. Do you think that any citizen can enjoy any substantial civil right of any nature if he does not have the right of economic freedom which is embodied in the power to control the use and the sale of his own property?

Mr. BLOCH. He does not. He is being deprived. If I cannot sell my house or piece of property that I own to whom I please or refrain from selling it, then I am deprived of absolute ownership of that property, because one of the concomitants of ownership is the right to sell or not to sell and to whom I please and when I please and on what terms I please.

One of the thoughts that I had in that connection several months ago when I wrote a talk for the American Bar Association regional meeting in Birmingham—in November of a year ago—which I called "The Tangled Web"—sort of paraphrasing, "What a tangled web we weave" you know. The illustration was as to the restrictive covenant cases. In the restrictive covenant cases the court held, as the chairman, of course, knows, that you and I or any other private owner, that we had a perfect right to agree with one another not to sell our property, our own private property, to a person of another religion or another race or what not; that that was protected by the fifth amendment and the fourteenth amendment; that it was a part of the liberty of contract, but with that being a part of the liberty of contract, then they went ahead and said in *Shelly v. Kraemer*, 334 U.S. 1, although you have that right, if one of those who so agreed with you violates his contract, the courts have no right to enforce that contract, because thereby you have State action in violation of the fourteenth amendment. So if you have a right of contract—if you have a liberty of contract—if you have a contractual right which the State courts cannot enforce, do you have any contractual right?

Senator ERVIN. In other words, that decision held, as applied to the States, that a citizen, under the due process clause of the Federal Constitution had the right to make a certain contract, but that the same due process clause prohibited the enforcement of the contract which the due process clause itself declared to be valid.

Mr. BLOCH. That is it. How do you or I or anybody else have the right of contract if we do not have the right to call on the courts to enforce that right?

Senator ERVIN. And the Supreme Court was not accustomed to make such ridiculous and contradictory interpretations of the same clauses of the Constitution until we have had all of this agitation of recent years about civil rights, was it?

Mr. BLOCH. I think that decision came in 1948 shortly prior to the election in November of 1948.

Senator ERVIN. Yes. And even since then there has been a decision, I believe, *Barrows v. Jackson* in which the courts did reiterate that contracts of this nature were perfectly valid and that they did not impinge in any way upon the fourteenth amendment, as long as their objective was accomplished by the voluntary actions of individuals.

Mr. BLOCH. I had always thought that it was one of the basic principles of the law that "for every right there shall be a remedy" (*ubi jus, ibi remedium*).

Senator ERVIN. That was prior to our law?

Mr. BLOCH. The common has was the foundation of it. I thought about it the other day when I read in the New York Times of Tuesday, June 11, an article entitled, "Forty-Six Lawyers Urge Wallace To Stand Aside in Alabama University." I do not want to get into that debate, but I do not know whether the chairman saw it or not. It starts off stating that 46 nationally prominent lawyers called on Gov. George C. Wallace of Alabama today to obey the law on integration at the University of Alabama. And I was particularly struck with some of the names of the distinguished gentlemen who signed this, three former Attorney Generals of the United States, the president of the American Bar Association, the president-elect and a past president of the American Bar Association, law school deans. I wondered when I read this—it has this clause in it—

lawyers have a special responsibility to support the rule of law in our society and to obey the fundamental legal principles that guarantees safety and justice for all.

Of course, nobody can argue with that statement—

lawyers have a special responsibility to support the rule of law in our society, to obey the fundamental legal principles that guarantees safety and justice for all.

I read it yesterday evening on the train coming up. And when I read it I put this query, What fundamental legal principles? What are the fundamental legal principles they are talking about? Was not *Plessy v. Ferguson*, the doctrine in *Plessy v. Ferguson* a fundamental legal principle? And yet the Supreme Court came along, and on the basis of psychology swept it aside.

Who is going to determine what a fundamental legal principle is? Is a fundamental legal principle one that is decided by whoever might happen to compose the Supreme Court at a given time with the law changing from day to day?

Senator ERVIN. Isn't it true that until recent years a fundamental legal principle was that the Constitution of the United States was to be interpreted by the Supreme Court of the United States solely for the purpose of ascertaining the intention of the people who drew it and the people who ratified it and to carry that intention into effect?

Mr. BLOCH. Yes, sir.

Senator ERVIN. The Court used an expression in the *Brown* case which has given me more concern than almost anything else. They said—

We cannot turn the clock backward to 1868 when the amendment was ratified or even to 1896 when *Plessy v. Ferguson* was decided.

Was it not the duty of the Court to turn the clock back to 1868 and to determine what those who drew the 14th amendment at that time and those who ratified it intended?

Mr. BLOCH. I have always thought that one of the fundamental principles of law of statutory construction was to endeavor to determine the intent of those who passed or enacted the legislation or adopted the Constitution. Illustrative of the thought of the chairman's question comes this thought, that a fundamental legal principle, that phrase, sort of struck me as I rode through the country yesterday, through your State. In 1868 the 14th amendment was adopted with the provision that no State should deprive any person within the jurisdiction of the equal protection of the law.

What did that phrase mean? As it came into being, according to my thought there came into being a fundamental legal principle when in 1896 the Supreme Court of the United States, following—going back to *Roberts v. The City of Boston*, decided in 1849 (even prior to the 14th amendment)—they decided that the separate but equal doctrine would apply—then the separate but equal doctrine became a fundamental legal principle and that was the fundamental legal principle that I was taught that we ought to obey. And that fundamental legal principle, adopted by the Supreme Court of the United States in 1896, was ratified by a unanimous Court headed by Chief Justice Taft in 1927, and it remained a fundamental legal principle until May 17, 1954.

Senator ERVIN. In the *Brown* opinion, that legal principle utterly vanished from the Constitution of the United States without any change in the phraseology of the Constitution being authorized by the only agencies of Government having the power to change the meaning of the Constitution; namely, the Congress and the States.

Mr. BLOCH. What was a fundamental legal principle in the language of this article from 1896 to 1954 is no longer a fundamental legal principle. Why?

Senator ERVIN. In that connection I would just like to read this statement made by the Chief Justice of the Supreme Court of Michigan, Justice Dethmers. He points out how the judiciary or judicial action has been conducting itself in disregarding precedent. He says:

If, as urged, the Court is to exert a political power to achieve social ends it deems expedient, what will remain of constitutional restraint or government and constitutional guarantees of personal rights and liberties? Shall not these be left then to the whims and caprice or, at best, the good intentions of men, be they judges, legislators, or administrator of the law? It was not for this that our forefathers fought nor for this they framed the Constitution and its Bill of Rights.

And then I would like to read a statement made by Thomas Raeburn White. He says:

If it be admitted that the Court may change the Constitution by construction whenever it sees a need therefor, constitutional government as we have known it and as it was visualized by its founders has ceased to exist.

Do you agree with those statements?

Mr. BLOCH. Yes, sir.

Senator ERVIN. Is it not rather futile for deans of law schools to think that there is anything guaranteed to anybody in a written constitution if that written constitution is subject to changes of meaning whenever a majority of the temporary occupants of the Supreme Court so decree?

Mr. BLOCH. It will become what one of the justices said, "Like a railroad ticket, good for this trip and 1 day only." And we will not have any fundamental value in it, but without being personal to anybody it is going to be very interesting to take that article—that is one of the reasons I have saved it—to see how many of the gentlemen who signed it either officially or in their private capacity have ever sought to induce the Supreme Court of the United States to take back an established fundamental constitutional principle.

Senator ERVIN. I want to ask one or two questions with reference to certain recommendations that the Civil Rights Commission or

some of its members have suggested and would seem to me to have a strong bearing on the Federal-State relationship. It is suggested here that the Congress pass an act providing that whenever a State law enforcement official overestimates the degree of force necessary to effect an arrest or the detention of a person charged with violating the State law within the borders of the State that he should be subject to trial in the Federal court, and if convicted be subject to be punished by imprisonment and fine or both.

What is your opinion with reference to the wisdom of such legislation in its possible effect on good Federal-State relations and, also, in respect to its possible effect on the enforcement of the State's laws against citizens of the State violating those laws within the borders of the State?

Mr. BLOCH. I think it would be very unwise, because it would make every arrest that a State arresting officer makes in the line of his duty in an effort to protect the society that he is sworn to protect—if it would make every State law officer subject to the will of the Federal trial jury and the judge who happened to be presiding in that Federal court—and the natural effects of it would be that that man would be very leery of making any arrests at all. Therefore, the society—the people not only of the Southern States now, the people of all States—would be at the mercy of a criminal class whom the arresting officer was afraid to arrest, feared to arrest, not on account of physical fear, but for the fear that he would be subjected to prosecution, and to the expense of defending that prosecution.

In this same issue of the New York Times of yesterday, in that article you will find another article by a police official of the State of New York—I have forgotten his name—I will try to find it for you—in which he addressed a convention somewhere in upstate New York, Buffalo, I believe it was, and spoke of the very great difficulty with which police officers in his State of New York had in, I think it was—I am not very sure that it was New York—in enforcing the criminal laws, not by reason of the fear of arrest—that facet was not in it—by reason of the people that he arrested being freed on some technical ground.

Senator ERVIN. Would not the enactment of a law of this character by the Congress place a sheriff or a deputy sheriff or a police officer in this kind of a dilemma—if he failed to exercise the proper degree of force, the person that was the lawbreaker would go free, or, he would, probably, fail to effect the arrest, or the lawbreaker might beat him up or the lawbreaker might possibly even murder him. On the contrary, if he overestimated the degree of force then he would be subject to prosecution by the Federal Government as a common criminal?

Mr. BLOCH. That is right.

Senator ERVIN. Do you not believe that the Federal Government ought to show more solicitude than that for the rights and the duty of the States to try to protect society within their borders from the criminal elements in society?

Mr. BLOCH. I will answer that by saying that if I had any influential position in the Federal Government, certainly, it would be my aim to try to protect society as a whole rather than any particular segment of it.

Senator ERVIN. And do you not think that the Federal Government should ally itself with the State in the enforcement of criminal law, rather than being placed in the position where it is allied, even to this extent, with the criminals against law enforcement?

Mr. BLOCH. Yes.

Senator ERVIN. The Commission also recommends that whenever law enforcement officers go beyond the scope of their duty or use excessive force and injure a person, that all of the taxpayers of the municipality would be responsible for any judgment which the wrongdoer might recover against those officers. Does not the ordinary arrest by law-enforcement officers occurring in connection with a violation of a State law, come within the State law rather than a municipal ordinance?

Mr. BLOCH. Yes. That law which you speak of is a corollary—it used to underlie the so-called antilynch law, back in the days when there was still some lynching. You will remember that almost every session of Congress there used to be an effort to penalize the community for what some group of lawbreakers did.

This suggested law that you just pointed out is simply a corollary to that old thought. And with all respect to the gentlemen who propose it on the Commission, it seems to me that those proposals about which you have inquired are right sound evidence to support my argument that there ought to be somebody on the Commission who has a little greater knowledge of the practical administration of criminal law at the grassroots.

Senator ERVIN. There is, also, a recommendation here which Judge Storey and Dr. Rankin dissented from to the effect that power be given to the Federal Government to compel any bank, or other such institutions be governed by an agent of the Federal Government with respect to the persons to whom they shall make their loans. Do you not think that it would be an entirely unnecessary extension of Federal power for the Federal Government to undertake to tell banks and State loan associations and other lending institutions to whom they must loan the money that belongs to their stockholders and depositors?

Mr. BLOCH. I do. I think that it would be a violation of what these gentlemen call the fundamental principles of the law.

Senator ERVIN. Yes. Do you agree that all of these civil rights bills they have been recommending are based upon the very unfortunate theory that the only way that you can give civil rights to some Americans is to either reduce the States to a zero or to rob all other Americans of basic rights equally precious to the ones you are seeking to secure?

Mr. BLOCH. That is true.

Senator ERVIN. Are there any questions?

Mr. CREECH. No.

Senator ERVIN. Do you have any further observations?

Mr. BLOCH. No, sir.

Senator ERVIN. I want to thank you for making your appearance here before the subcommittee and giving us the benefit of your views in this field. In my book, you are the greatest expert in this field in the country. I do not know of anybody who is better versed in constitutional law and in the constitutional history which explains why we have these laws. And I certainly appreciate your being here.

Mr. BLOCH. Coming from you, sir, that is the greatest compliment I ever received.

Senator ERVIN. So far as I know, this is our sixth day of hearings. We have heard everyone who wished to be heard, every organization that wished to have representatives make a personal appearance, as well as witnesses who have been invited to testify by the committee or members of the committee or by other Senators. Anyone who has any kind of a statement that he wants to put in the record will please communicate with the committee, send it to the chairman or to Mr. Creech and we will undertake to see that it is included in the record.

The committee now stands in recess until the call of the Chair.

(Whereupon, at 3:45 p.m., the subcommittee adjourned, subject to the call of the Chair.)

APPENDIX

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
April 24, 1963.

DEAR MR. ATTORNEY GENERAL: The Senate Subcommittee on Constitutional Rights is presently considering two bills relating to the extension of the Commission on Civil Rights. The two are S. 1117, the administration bill introduced by Senator Hart, and S. 1219, introduced by Senator Saltonstall. Both bills, copies of which are enclosed, would amend chapter 21 of title 42, U.S. Code.

As you will note, S. 1117 provides for a 4-year extension of the Commission rather than the 2-year extensions which it received in the past. It would also increase the compensation of the Commissioners, and, as is indicated in its title, the Commission would become an agency in the executive branch of the Government. The powers of the Commission also would be expanded, and it would be given the new power to make "such rules and regulations as it deems necessary to carry out the purposes of this act."

S. 1219 is substantially identical to S. 1117 except that the Commission would be made a permanent agency in the executive branch, and there is no provision for the increased compensation of its members.

The subcommittee will appreciate receiving your views on these measures and your authorization of the insertion of these views in the published hearing record.

Thank you for your cooperation in this matter.

With all kind wishes, I am,

Sincerely yours,

SAM J. ERVIN, Jr., *Chairman.*

OFFICE OF THE ATTORNEY GENERAL,
STATE CAPITOL,
Phoenix, Ariz.

It is the opinion of this officer that Senate bill 1117 should be adopted with no pay increase, and that the Commission be made a permanent agency in the executive branch of the Government. These latter two provisions are in Senate bill 1219, a similar bill as Senate bill 1117, but not as broad.

Sincerely,

ROBERT W. PICKERELL, *Attorney General.*
SAMUEL J. MACALUSO, *Assistant Attorney General.*

OFFICE OF THE ATTORNEY GENERAL,
Little Rock, Ark., May 20, 1963.

Hon. SAM J. ERVIN, Jr.,
U.S. Senator,
Chairman, Subcommittee on Constitutional Rights.
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: Thank you for your letter of April 24, explaining the provisions of bills S. 1117 and S. 1219 concerning the Commission on Civil Rights.

It is my opinion that this Commission serves no useful purpose and has as its sole objective stirring up litigation and creating antagonism over questions of individual State concern. Hence, increasing the terms and compensation of the members of the Commission and allowing it the power to make

"such rules and regulations as its deems necessary to carry out the purposes of this act" as provided in S. 1117 is completely unjustified. Furthermore, making this Commission a permanent agency of the executive branch, as called for by S. 1219, would not improve the situation but, rather, would give the Commission all the more license to continue its practices of interference.

For these reasons, I am opposed to the passage of bills S. 1117 and S. 1219 and am happy to authorize insertion of these views in the published hearing record.

We also received your letter containing copies of three bills, S. 666, S. 1214, and S. 1283, referred to your subcommittee concerning voting rights. The cumulative effect of these three bills is to allow the Federal Government to officiously interfere with State elections under the guise of protecting constitutional rights of individuals. To require State officials to submit such information as is necessary for the Commission to collect and publish registration and voting statistics is unnecessary and could become quite burdensome and dysfunctional (S. 1214). Naturally, I am opposed to the passage of these bills for the same reasons that I oppose S. 1117 and S. 1219.

Please let me know if I can be of further assistance.

Very truly yours,

BRUCE BENNETT, *Attorney General.*

SACRAMENTO, CALIF., April 30, 1963.

HON. SAM J. ERVIN, Jr.,
Chairman, U.S. Senate Subcommittee on Constitutional Rights, Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: I have for reply your letter of April 24, asking for an opinion on S. 1117 and S. 1219.

We have been and are in strong support of the Federal Commission on Civil Rights. We would accordingly urge passage of S. 1117. Publications of the Commission on Civil Rights are used by our office and throughout the State of California. We think that the problem of civil rights constitutes a major threat to both the foreign and the domestic policies of the United States, and we think that the Civil Rights Commission has done as much toward the solution of this problem as any other agency of the Government.

I thank you for offering the opportunity to provide this opinion, and I would be glad to buttress it with detail should your committee so desire.

Very truly yours,

STANLEY MOSK, *Attorney General.*

THE DEPARTMENT OF LAW,
STATE OF GEORGIA,
Atlanta, May 1, 1963.

Re S. 1117 and S. 1219.

HON. SAM J. ERVIN, Jr.,
*Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.*

DEAR SENATOR ERVIN: I have carefully reviewed the two above-proposed bills, and herewith submit my views.

In my opinion, these measures are completely unnecessary, and can only serve to aggravate the very problem which the bills ostensibly are designed to alleviate. The constant harping on racial and minority problems which the Commission must engage in to justify its continued existence does not solve but only accentuates and points them up.

When H.R. 6127 was being debated prior to its passage in 1957, the Commission was presented as an interim investigative agency designed to make studies and recommendations concerning needed legislation. If 6 years is not sufficient time for the Commission to complete its work, I do not see how it can ever be expected to do so.

Moreover, in view of the ever-expanding scope given to the 14th amendment by judicial decision, it is difficult to understand why any new legislation could possibly be needed. The Supreme Court seems to have assumed the role of lawmaker in this area, as well as the interpreter of the law, and what this country needs is less and not more agitation in the field of so-called civil rights.

It is by now common knowledge, born by experience, that such agencies as the Commission inevitably become the captive tools of partisan special-interest groups which can hardly be expected to ever be satisfied with the state of things.

With kindest regards, I am,
Sincerely yours,

EUGENE COOK, *Attorney General.*

STATE OF HAWAII,
DEPARTMENT OF THE ATTORNEY GENERAL,
Honolulu, May 20, 1963.

HON. SAM J. ERVIN, JR.,
*Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary,
U.S. Senate, 88th Congress, Washington, D.C.*

DEAR SENATOR ERVIN: We acknowledge receipt of your letter of April 24, 1963, pertaining to pending legislation (S. 1117 and S. 1219).

We are of the belief that the work of the Commission on Civil Rights has been excellent. We also see a need for continued existence of the Commission. We believe that a 4-year extension of the Commission would be in order. We are also in accord with the proposal that the Commission should be a permanent agency in the executive branch of the Government. Power to make necessary rules and regulations seems desirable. Regarding the increase in compensation for Commission members, we trust that the views of your committee will be reasonable and should prevail.

We appreciate this opportunity to express our views on the above pending legislation.

You may insert this letter in the published hearing record if you so desire.

Very truly yours,

BERT T. KOBAYASHI, *Attorney General.*

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE, BATON ROUGE,
New Orleans, La., May 2, 1963.

HON. SAM J. ERVIN, JR.,
U.S. Senate, Subcommittee on Constitutional Rights, Committee on the Judiciary, Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: This letter is being written to you in your capacity as chairman of the Senate Subcommittee on Constitutional Rights. The contents hereof are relative to two bills, S. 1117 and S. 1219, presently being considered by your committee and relating to the extension of the Commission on Civil Rights. It is respectfully requested that this letter be inserted in the permanent and published hearing record on this subject.

As a citizen of the United States and as attorney general of the State of Louisiana, I am unalterably, adamantly, and staunchly opposed to any extension of the Commission on Civil Rights. Likewise, I shall continue in the future, as I have in the past, to use all of the energies, abilities, and persuasions of myself and my staff to oppose any and all tyrannical legislation, such as created the Commission on Civil Rights, which has as its ultimate aim flagrant Federal abuses of States rights in violation of the 10th amendment of the Constitution.

Initially, the legislative act creating the Commission is basically unconstitutional. The power of Congress to legislate with regard to the deprivation of the right to vote is granted by the 15th amendment of the U.S. Constitution. "But that amendment relates solely to action 'by the United States or by any State,' and does not contemplate wrongful individual acts. It is in this respect similar to the [same] clauses in the 14th amendment * * *." *James v. Bowman*, 23 Supreme Court 678, 190 U.S. 136; *Terry v. Adams*, 73 Supreme Court 809, 345 U.S. 461.

The Civil Rights Act, however, is not limited to State action but includes any person engaging in or about to engage in a certain type of conduct. It will be particularly noted that the section makes no reference to color of law, a phrase with which the Congress is very familiar, having used it in other sections of this as well as other civil rights acts. The power of Congress to legislate with regard to the deprivation of the right to vote is granted by the

15th amendment and is limited therein to cases wherein the invasion of the right to vote is occasioned by action of either the Federal or State Government. While Congress may have the right to investigate in order to compile facts which may aid in its legislative duty, it does not have the power to investigate matters and conditions in an area in which Congress is forbidden to legislate.

Where Congress does not have the power or authority to investigate, a fortiori, it cannot delegate such power to the Commission and the 15th amendment, " * * * does not, however, authorize Congress to prohibit or punish purely individual and private action depriving another of the right to vote on account of his race or color." *U.S. v. Reiss, et al*, 92 U.S. 214.

The rules of the Civil Rights Commission provide that interrogation of witnesses at hearings shall be conducted only by members of the Commission or by staff personnel. Further, individuals accused of violations of the act are subpoenaed and forced to appear at hearings without any disclosure to them of the names of accusers or other information in the accusation and deprives the accused of confrontation and cross-examination of their accusers, traditional procedural safeguards. This denial is unreasonable, arbitrary, and capricious and, further, unlawful and unconstitutional. Confrontation and cross-examination are protected by the American ideal of due process and despite the fact that an accused is being condemned by faceless accusers, some of whom are not even known by the Commission, these rights are denied to the accused.

This denial is clearly unlawful and in the teeth of express statutory provision to the contrary. "Every party shall have the right to present his case on defense by oral or documentary evidence, to submit rebuttal evidence, to conduct such cross-examination as may be required for a full and true disclosure of facts * * *" 5 U.S.C.A., 1006(c). Our jurisprudence from time immemorial upheld the rights of an accused person at hearings, trials, and in courts to be advised of the charges against him, faced and confronted by his accusers, and permitted to cross-examine his accusers. Mr. Justice Douglas, in a concurring opinion in *Peters v. Hobby*, 349 U.S. 331, says:

"It, therefore, becomes necessary for me to reach the constitutional issue. Dr. Peters was condemned by faceless informers, some of whom were not known even to the board that condemned him. Some of these informers were not even under oath. None of them had to submit to cross-examination. None had to face Dr. Peters. So far as we or the board know, they may be psychopaths or venal people, like Titus Oates, who revel in being informers. They may bear old grudges. On the cross-examination, their story may disappear like bubbles. Their whispered confidences might turn out to be yarns conceived by twisted minds or by people who, though sincere, have poor faculties of observation and memory.

"Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life. We deal here with the reputation of men and their right to work—things more precious than property itself. We have here a system where Government with all its power and authority condemns a man to a suspect class and the outer darkness, without the rudiments of a fair trial. The practice of using faceless informers has apparently spread through a vast domain. It is used not only to get rid of employees in the Government, but also employees who work for private firms having contracts with the Government * * *.

"An administrative agency—the creature of Congress—certainly cannot exercise powers that Congress itself is barred from asserting. Those who see the force of this position counter by saying that the Government's sources of information must be protected, if the campaign against subversives is to be successful. The answer is plain. If the sources of information need protection, they should be kept secret. But once they are used to destroy a man's reputation and deprive him of his 'liberty,' they must be put to the test of due process of law. The use of faceless informers is wholly at war with that concept. When we relax our standards to accommodate the faceless informer, we violate our basic constitutional guarantees and ape the tactics of those whom we despise."

I am further opposed to the extension of the Commission on Civil Rights for the known reason that the Commission has done nothing constructive in the way of recommending positive legislation which would make more secure the individual rights of the citizens of the United States. Its only recommendations have been to increase its own powers and salaries. All of the proposed statutes or amendments in the field of civil rights have been made

and sponsored by individual legislators. Each time the Commission has requested extension of itself, it has also requested increases in salaries, daily expenses, and per diem. The cost of this Commission, in relation to the results and recommendations have been astronomical. It is an unwanton waste of taxpayers' dollars.

For emphasis, I am definitely opposed to the establishment of this agency as a permanent agency under the executive branch of the Government. This would make permanent that heinous device called the "Federal voting referee." How will we keep our country free if we cannot keep our elections free? As stated by the Honorable Senator Talmadge of Georgia:

"We cannot keep our elections free if the electorate is to be determined by registration officials who owe their allegiance to a President who owes his allegiance to the political party which elected him."

The broad unconstitutional powers of the Commission on Civil Rights, while intended to be devious, is an apparent design to further deprive the States of rights guaranteed by the 10th amendment. Likewise, presently proposed amendments to broaden the powers of the Commission seek to abrogate the affirmative powers of the State under article 1, section 2, of the Constitution to regulate the qualifications of voters. The entire scheme leads to centralization of power in the Federal Government and will eventually destroy the dual sovereignty system of Government which has made this Nation the most prosperous and envied in the world. It is basic knowledge to everyone that the Original Thirteen States would never have consented to a Constitution which would have required that they give up their individual States rights. The Constitution was so framed by those renowned and eminent men who wrote it.

The Commission on Civil Rights is merely an unconstitutional body created to put another nail in the coffin of States rights. It is hoped therefore that my opposition to any extension or permanency of the Commission on Civil Rights will be made a part of your record together with the oppositions of other sound-thinking Americans who know that this vicious and serious usurpation by the Federal Government of States rights must come to a halt before the United States of America becomes a constitutional monarchy and eventually destroys itself.

Sincerely,

JACK P. F. GREMILLION,
Attorney General
(Per Assistant Attorney General, M.E.C.)

STATE OF MAINE,
DEPARTMENT OF THE ATTORNEY GENERAL,
Augusta, May 1, 1963.

Hon. SAM J. ERVIN, Jr.,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: You have asked for my comments on two Senate bills relating to the extension of the Civil Rights Commission—S. 1117 and S. 1219.

I do not feel that I am in a position to give an opinion as to the usefulness and effectiveness of the Commission and whether or not its life should be extended and its duties broadened.

My only comment is that I am basically opposed to a broad delegation of rulemaking power by a legislature to any administrative agency or any commission of this sort. The language used in the two bills is such a broad delegation in my opinion.

Since there is little in this letter to contribute to your deliberations, I see no need of inserting it upon any record.

Sincerely yours,

FRANK E. HANCOCK, *Attorney General.*

STATE OF MAINE,
DEPARTMENT OF THE ATTORNEY GENERAL,
Augusta, May 8, 1963.

Hon. SAM J. ERVIN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: You have my permission to enter my letter of May 1, 1963, regarding S. 1117 and S. 1219 in the Record.

Very truly yours,

FRANK E. HANCOCK, *Attorney General.*

STATE OF MICHIGAN,
OFFICE OF ATTORNEY GENERAL,
Lansing, May 20, 1963.

Hon. SAMUEL J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: In reply to your recent letter pertaining to Senate bills S. 1117 and S. 1219, please be advised that I regard bill S. 1117 as the most desirable and effective of the proposed bills.

The provisions of S. 1117 are consistent with due process and will furnish the Civil Rights Commission the greatest opportunity to protect witnesses and realistically accomplish its tasks. The authority to subpoena witnesses and the power to take testimony in executive session, together with the power to make rules and regulations, provide adequate constitutional safeguards without unduly hampering the Commission in the discharge of its noble purposes.

Further, the expanded powers enumerated in section 104 (a) through (1) will greatly facilitate the orderly transaction of Commission business. The provision granting the Commission the authority to make "such rules and regulations as it deems necessary to carry out the purposes of this act" is a traditional provision found in all statutes creating administrative agencies at both the State and Federal levels. In Michigan our experience has indicated that this particular provision has served most effectively in assisting our various agencies in the discharge of their statutory responsibility.

Consequently, I would like to urge the passage of bill S. 1117 in preference to bill S. 1219.

Sincerely yours,

FRANK J. KELLEY, *Attorney General.*

OFFICE OF THE ATTORNEY GENERAL OF MISSOURI,
Jefferson City, May 31, 1963.

Hon. SAM J. ERVIN, Jr.,
Chairman, Committee on the Judiciary, Subcommittee on Constitutional Rights,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter requesting my views on proposed legislation now before the Senate Subcommittee on Constitutional Rights which would extend the life and expand the powers of the U.S. Commission on Civil Rights.

The desire to secure basic human rights was the primary motivating force in bringing people to these shores and in the creation of the United States as an independent Nation. The failure to secure these rights for all human beings represents a tragic contradiction between principle and practice in the history of our Nation. In many sections of the Nation the power of government and law—which should be mobilized as a positive force to protect human rights—has been an instrument of suppression of basic human rights and of intimidation of those seeking to realize their rights.

More recent developments, however, have been encouraging. On the Federal level and in many of our States the government is no longer a negative or a neutral force. On the Federal level we have, in the past 15 or 20 years, experienced action by all three branches of Government to make the Constitution a living reality and to put the power of the Government behind its complete implementation. The courts have issued a number of historic decisions expanding the protection of the Constitution; the President has taken Executive action to implement the Constitution generally and these decisions in particular; and

Congress has passed new civil rights legislation to protect basic rights--particularly the right to vote.

Part of this package of legislation provided for the creation of the Commission on Civil Rights with the specific power to investigate interference with the right to vote and general powers to investigate denials of equal protection of the laws in all areas of life.

Pursuant to these powers the Commission has held many hearings in various parts of the country and has issued serious and well-documented reports concerning the present situation in major areas of concern with civil and human rights. The Commission has established an advisory committee in each of the States and the researches of these committees have provided source material in depth on the status of civil rights in a number of local areas. The Missouri Committee has been very active and has been most helpful to our State commission on human rights.

The Commission on Civil Rights has really just begun its efforts. It is coming of age in a year when minority groups across the United States are indicating in dramatic fashion that the speed with which we are implementing human rights by legal action is not sufficient. Through extra-legal action from one end of the country to the other they are attempting to obtain equality of treatment which they feel the law has not obtained for them. To permit the Commission's mandate to expire at this time will undoubtedly reaffirm this feeling and incite these groups to continue to look outside the law for recourse.

In this context and with this background, I would make the following specific recommendations:

(1) That the Commission on Civil Rights be extended for 4 years or made a permanent agency of the Federal Government. In a real sense the fight for equal treatment under the law is just beginning. The only agency of the Federal Government whose sole jurisdiction is to deal with problems of equal protection must be granted continued existence.

The Missouri Commission on Human Rights was initially created as a temporary agency and later granted permanence by statute. I suggest that the "probationary" period for the Federal Commission is over, and that it should be made a permanent agency.

(2) That the powers of the Commission should be expanded along the lines outlined in S. 1117, 88th Congress.

(3) That the compensation and allowances of the Commissioners should be increased along the lines of S. 1117, 88th Congress.

(4) That the Commission should specifically be granted the power to "make rules and regulations as it deems necessary" to carry out the purposes of the Civil Rights Act.

(5) That funds should be authorized at this time for the Commission to pay at least minimal operating costs of the State Advisory Committees which now operate in borrowed space and on donated funds. Their role in the work of the Commission can become increasingly important. Action at the local level should be officially encouraged.

The foregoing recommendations do not in any wise constitute the sum total of my thinking as to possible legislative improvements with respect to minority rights. However, as a starter, I believe these recommendations would be most beneficial if enacted into law.

Sincerely yours,

THOMAS F. EAGLETON, *Attorney General.*

STATE OF NEW JERSEY,
June 12, 1963.

HON. SAM J. ERVIN, JR.,
*Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary,
U.S. Senate, Washington, D.C.*

DEAR SENATOR ERVIN: This is in reply to your recent request for my views on S. 1117 and S. 1219 relating to the extension of the Commission on Civil Rights and presently under consideration by your subcommittee.

As pointed out in your letter the bills are substantially identical except that under S. 1219 the Commission would be made a permanent agency in the executive branch while S. 1117 contemplates a 4-year extension of the activities of the Commission rather than the 2-year extension provided for in the past.

My own preference would be the enactment of S. 1117. The work of the Commission as it concerns the investigation and study of civil rights problems is by no means completed. It would seem, however, that by 1967 we will be in a better position to make an intelligent decision as to exactly what kind of agency, if any, is needed in the Federal Government to deal with civil rights on a national basis. It is much too early to determine that the Commission in its present form should now be made a permanent agency. Indeed, perhaps after 4 more years of study, the conclusion might very well be that a permanent agency should be established but not in the form of a commission. Instead, the conclusion might be that it should be a line agency headed by a single executive to which would be attached a broadly representative advisory committee.

My sincere apologies for this delay in replying to your inquiry, particularly since I understand that your subcommittee has already conducted its hearing on these bills. Notwithstanding, you may, if you so desire, insert my views in the published hearing record.

Sincerely yours,

ARTHUR J. SILLS, *Attorney General.*

ATTORNEY GENERAL, STATE OF NEW YORK,
New York, N.Y., May 2, 1963.

Hon. SAM J. ERVIN, Jr.,
*Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary,
U.S. Senate, Washington, D.C.*

DEAR SENATOR ERVIN: I am pleased to comment on two bills presently under consideration in the Subcommittee on Constitutional Rights relating to the Commission on Civil Rights, S. 1117 and S. 1219.

I strongly support the proposal under both bills to develop the role of the Commission on Civil Rights as a national clearing house for information, and the proposal under S. 1219 to make the Commission a permanent agency of the Federal Government.

The Commission has demonstrated abundantly in its short life since 1957, a critical 5 years in the history of race relations in our country, the magnificent contribution that can be made through objective, diligent, and thoughtful reporting.

In my opinion, to continue such a Commission on a temporary basis does a disservice to its cause. There can be no gainsaying the prospect that problems of civil rights will remain with us for years to come. The respect which the agency could command as a permanent agency of the executive department would be conducive to a more efficient operation, enabling it to secure maximum cooperation in its various programs. It would be better able to plan its activities and build its staff if it were not forever working against an expiration date. In the name of good government and the necessities of the civil rights problem in our time, I urge that your subcommittee report favorably on S. 1219.

As the attorney general of a State which takes great pride in its own complement of laws and commissions to protect and further the civil rights of all its citizens, regardless of race, creed, color, or national origin, I also value the proposal for a national clearinghouse of information, which would help us to be more effective within our own State.

I authorize the insertion of these views in the published hearing record.

Sincerely yours,

LOUIS J. LEFKOWITZ, *Attorney General.*

ATTORNEY GENERAL, STATE OF NORTH DAKOTA,
Bismarck, May 3, 1963.

Hon. SAM J. ERVIN, Jr.,
*Chairman, Committee on Constitutional Rights,
Senate Office Building, Washington, D.C.*

DEAR SENATOR ERVIN: This is in response to your letter of April 24, 1963.

I have read S. 1117 and S. 1219 which you enclosed in your letter. While I have not been in particular contact with the record and accomplishments of the Commission on Civil Rights, I might submit that I do not particularly support either of the bills.

Of necessity, I can only speak for myself; however, our experience in this field has been very limited. We do have civil rights statutes in force and there have been a few successful prosecutions. This leads me to the conclusion that we, in North Dakota, do not have the problems that some sister States might; consequently, I see no compelling need for a Federal authority in this area. Of course, merely setting up the Commission does not solve the problem and the ultimate decision lies with the Congress.

I trust that this information might be of service to you.

Very truly yours,

HELGI JOHANNESON, *Attorney General.*

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
Harrisburg, May 14, 1963.

HON. SAM J. ERVIN, JR.,
*Chairman, Subcommittee on Constitutional Rights,
U.S. Senate, Washington, D.C.*

DEAR SENATOR ERVIN: I am pleased to submit my views with respect to Senate bills 1117 and 1219 relating to the extension of the Commission on Civil Rights.

I strongly recommend the continuation of the life of this Commission, and particularly favor Senate bill 1219 which would make the Commission a permanent agency in the executive branch of the Federal Government.

The most serious and insidious denial of the rights guaranteed by our Constitution result from political, economic, and social discrimination. Making the Commission on Civil Rights a permanent part of our Federal Government would be a great step forward in overcoming the abuses and denials of the equal protection of the law because of a person's race, religious, or racial origin.

Although I urge the enactment of these statutes, it is my opinion that the authority contained therein should be extended to permit the handling of specific complaints in areas other than those involving voting. Although both bills would empower the Commission to provide advice and technical assistance with regard to equal protection of the law in all civil rights areas, they are silent on such vital and important matters as the right of Government officials to intervene in civil rights cases. They are also silent with respect to such matters as housing, employment, public accommodation, and education. There should be provisions for hearings on these subjects with the right to issue orders enforceable in the courts.

Sincerely yours,

WALTER E. ALESSANDRONI, *Attorney General.*

STATE OF RHODE ISLAND,
DEPARTMENT OF THE ATTORNEY GENERAL,
Providence, April 30, 1963.

HON. SAM J. ERVIN, JR.,
*Chairman, Committee on the Judiciary, Subcommittee on Constitutional Rights,
U.S. Senate, Washington, D.C.*

DEAR SENATOR ERVIN: This will acknowledge receipt of your letter of April 24, 1963, together with copies of the two bills introduced in the U.S. Senate with reference to the Commission on Civil Rights.

At your request, I have studied both bills in detail and while in no way professing to be an expert on the question in issue, it is my opinion that S. 1117, the administration bill, appears more desirable and more effective than Senator Saltonstall's bill, S. 1219. As I have indicated to you in prior answers to your correspondence, I am firmly convinced of the necessity of guaranteeing to every citizen of this Nation, the right to the secret ballot. I realize fully some of the practical difficulties attendant upon the passage of legislation to accomplish this purpose and for that reason, I would respectfully suggest that S. 1117 can certainly be termed a step in the right direction.

You, of course, have my consent to the insertion of my comments in the published record of the hearing to be held on either or both of the bills in question.

Very truly yours,

J. JOSEPH NUGENT,
Attorney General.

STATE OF UTAH,
OFFICE OF THE ATTORNEY GENERAL,
Salt Lake City, May 8, 1963.

HON. SAM J. ERVIN, Jr.,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: This will acknowledge receipt of your letter of April 24, 1963, relating to S. 1117 and S. 1219.

I have examined S. 1117 and favor the continuation of the Civil Rights Commission. I feel that for the most part the Commission is the best instrumentality to serve as a clearinghouse for civil rights problems. The administrative aspects of S. 1117, such as increasing compensation of Commissioners and other matters, I would view with favor. I further would view with favor the power of the Commission to adopt necessary rules and regulations.

There is, however, one aspect of the operation and jurisdiction of the Civil Rights Commission which I feel needs some congressional inquiry. As you are aware, in the case of *Hannah v. Larche*, 80 Sup. Ct. 1502 (1960), the U.S. Supreme Court limited the necessity of the Commission to afford persons who appeared before it under adverse circumstances the right to rebut, cross-examine, or make inquiry into the substance of a complaint before the Commission. I have some substantial doubts as to whether this decision has not unduly narrowed other constitutional rights. I recognize that the Supreme Court might have been motivated by a need to protect certain racial minority leaders from harassment. However, in doing so, it appears they limited the rights of other persons whose conduct was under inquiry to properly protect themselves.

Your attention is invited to a note in 7 Utah Law Review, 402 (1961), in which a similar conclusion is reached.

I do not feel that the executive session provisions of S. 1117 provide a suitable alternative to the right of reasonable appraisal of the substance under inquiry. Essentially is this so because, to some degree, the Civil Rights Commission operates quasi-judicially.

It appears to me that there is some inconsistency between the decisions of the Supreme Court in other cases involving the right to administrative hearings and the decision in the *Hannah* case, and, therefore, I feel that this one aspect of the operations of the Civil Rights Commission should, in the interest of civil rights, be examined as to the need for appropriate changes.

I strongly favor increasing the scope of obligation and function of the Civil Rights Commission, and, if in the discretion of Congress, the provisions of S. 1219, making the Commission a permanent function of the executive branch of the Government, is deemed necessary, then it should be carried out.

Sincerely,

A. PRATT KESLER,
Attorney General.

COMMONWEALTH OF VIRGINIA,
COMMISSION ON CONSTITUTIONAL GOVERNMENT,
Richmond, Va., May 22, 1963.

HON. SAM J. ERVIN, Jr.,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: Your letter of April 24 addressed to the attorney general of Virginia was turned over by him to me, and has received the attention of more than one member of our commission and staff. We are in accord with your view that the greatest single danger is giving to the Commission on Civil Rights the right to set up its own rules and regulations. I hope that that will be severely limited by the Congress itself. Otherwise, we are going to have another governmental agency going high, wide, and handsome.

Sincerely yours,

DAVID J. MAYS, Chairman.

STATE OF WYOMING,
OFFICE OF THE ATTORNEY GENERAL,
Cheyenne, July 3, 1963.

HON. SAM J. ERVIN, Jr.,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: This letter is in reply to your inquiry concerning the views of this office with reference to the two pending bills relating to the Commission on Civil Rights—S. 1117 and S. 1219. We would like to submit the following statement and hereby authorize you to insert it in the published record:

"With reference to S. 1219, we do not favor making a Commission on Civil Rights a permanent agency of the executive branch of Government. New agencies should be created when a need is conclusively established. We are confident of the capabilities of the judicial branch of our Government in administering justice as to these areas of constitutional rights.

"With reference to S. 1117, we believe that the rule and regulation making authority of the Commission is too broad in scope. Caution should be exercised in this delicate area of opportunity for administrative fiat."

We appreciate the opportunity you have given us to make our thoughts known.

With best regards.

Sincerely yours,

DEAN W. BORTHWICK,
Deputy Attorney General.

HON. BURKE MARSHALL,
*Assistant Attorney General, Civil Rights Division, Department of Justice,
Washington, D.C.*

DEAR MR. MARSHALL: During hearings on S. 1117 and S. 1219, bills to extend the life of the Civil Rights Commission, a recurring concern on the part of the members and witnesses has been the extent to which the Commission's work may duplicate that of your Division.

During hearings on the Justice Department's budget requests for fiscal year 1959, the following statement was made on behalf of the Department:

"In addition to the enforcement of the civil rights statutes it will take on a program of liaison and consultation with law-enforcement agencies and other officials of the States in order to promote understanding of the problems and to place the State and Federal responsibilities in their proper perspective."

Commenting on this, the Assistant Attorney General for the Civil Rights Division, W. W. White stated:

"We have in mind the great importance of the collection of far greater information—both factually and legally, in the whole civil rights area * * *. We think that without such activity we just cannot do the job."

In January 1962, testifying for appropriations for 1963, Attorney General Kennedy stated:

"In the field of civil rights the Department's basic policy is to seek effective guarantees and action from local officials and civic leaders, voluntarily and without court action where investigation has disclosed evidence of civil rights violations."

It would appear from these statements that the clearinghouse and technical assistance functions proposed for the Commission are already being performed by your Division.

Please outline for the subcommittee specifically what your Division has been doing in the areas of factfinding, advice, and technical assistance, the number of staff members engaged in such duties, how much time is devoted to their work by the Department, and express for the subcommittee your judgment whether there is or would be duplication of work between the Commission and your Division.

With all kind wishes, I am,

Sincerely yours,

SAM J. ERVIN, Jr., *Chairman.*

JULY 9, 1963.

Hon. SAM J. ERVIN, Jr.
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: In your letter of June 14, 1963, you raise the question of possible duplication between the work of this Division and the clearinghouse and technical assistance functions which would be given the Commission on Civil Rights under S. 1117 and S. 1219. As you know, the omnibus administration bill, S. 1731, contains the same provisions as S. 1117. I can assure the members of your committee that the duties and functions of the Commission and the Civil Rights Division would be quite distinct. I should like also to relate these duties to those of the Community Relations Service which the administration has proposed in S. 1731.

The Division's primary responsibility is to conduct litigation to enforce civil rights statutes. Current and cumulative information, both factual and legal, on such matters as bombings, sit-ins, police brutality, rejection of Negro voters, private desegregation suits, and local and State legislation affecting civil rights, is basic to this work. The Division, therefore, maintains files of pertinent newspaper clippings and legal case materials which are then used in connection with litigation. These files have, on occasion, permitted us to provide information to other Federal agencies and to Members of Congress, and we have been happy to do so. But this is incidental. The real purpose of the information compiled is to provide the Division with the kind of specialized "library" which it needs for its specialized legal work. It is not a "clearinghouse" and it is not prepared to act in that capacity.

Our work with local officials, to which the Attorney General referred, is also closely related to our primary duty of litigation. As the Attorney General stated, " * * * we have reopened and maintained communication with Negro and white leaders in the South and the North. As a result, we have been able to use our good offices effectively to mediate a great number of disputes, permitting considerable progress toward ending discrimination." These efforts have enabled us to avoid litigation in many instances. But we do not provide "technical assistance" and we have no staff members who are regularly assigned to mediation or advisory duties. The administration has therefore proposed not only the expansion of the duties of the Commission on Civil Rights but also the establishment of a Community Relations Service which could enter into racially troubled areas and carry on the tasks of mediation and extrajudicial settlement of local problems.

The proposed legislation expanding the duties of the Commission on Civil Rights would authorize that agency to provide information, advice and assistance upon the request of a private or public agency. This would be a logical extension of the present investigative and reporting duties of the Commission. The Commission has held hearings, collected a large amount of information, and published useful and valuable reports concerning many facets of racial discrimination and civil rights. The Civil Rights Division, on the other hand, does not hold hearings and does not publish reports or compile extensive bibliographical material. We find the publications of the Commission most helpful in our work. The functions of our agencies, as I have stated, are separate and distinct and the proposed extension of duties of the Commission has no counterpart in the Civil Rights Division.

If I may be of any further assistance to your committee, please feel free to call upon me at any time.

Sincerely,

BURKE MARSHALL,
*Assistant Attorney General,
Civil Rights Division.*

JULY 9, 1963.

Hon. ROBERT F. KENNEDY,
*The Attorney General,
Washington, D.C.*

DEAR MR. ATTORNEY GENERAL: I would appreciate your apprising the subcommittee of the total number of complaints referred by the Commission on Civil Rights to the Civil Rights Division of the Department of Justice. Specifically, the subcommittee would like to know the nature of the complaints and the action taken upon the complaints by the Department.

The subcommittee will appreciate your prompt attention to this request.
With all kind wishes, I am,
Sincerely yours,

SAM J. ERVIN, Jr., *Chairman.*

DEPARTMENT OF JUSTICE,
Washington, July 19, 1963.

HON. SAM J. ERVIN, Jr.,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: This is in reply to your letter of July 9, 1963, requesting information concerning the number and nature of complaints referred to this Department by the Commission on Civil Rights and the action taken upon such complaints by this Department.

I have examined the statistical records kept by the Department to determine whether information you seek would be available, and have concluded that in order to provide the information you seek it would be necessary to review in detail each of the files relating to the more than 3,000 complaints received annually from various sources. This is due to the fact that our machine listings contain only a single source for each complaint whereas, in fact, many complaints are received simultaneously, or approximately so, from more than one source. To provide you the statistics obtained from the mechanized records would be misleading; to obtain them by individually researching all our files would greatly overburden our limited staff and interfere with essential functions.

While I would like to be of assistance to you in this matter, practical difficulties make that impossible.

Sincerely,

BURKE MARSHALL,
Assistant Attorney General,
Civil Rights Division.

42. U.S. CODE § 1975

CHAPTER 20A.—CIVIL RIGHTS COMMISSION

§ 1975. Commission on Civil Rights.

(a) Establishment.

There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) Composition; appointment.

The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) Chairman and Vice Chairman.

The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

(d) Vacancies.

Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliations as the original appointment was made.

(e) Quorum.

Four members of the Commission shall constitute a quorum. (Pub. L. 85-315, pt. I, § 101, Sept. 9, 1957, 71 Stat. 634.)

SHORT TITLE

Section 161 of Pub. L. 85-315 provided that Pub. L. 85-315, which enacted sections 1975-1975e and 1995 of this title, and section 295-1 of Title 5, Executive Departments and Government Officers and Employees, amended section 1071 of this title, and sections 1343 and 1861 of Title 28, Judiciary and Judicial Procedure, and repealed section 1993 of this title, should be popularly known as the "Civil Rights Act of 1957."

§ 1975a. Rules of procedure.**(a) Opening statement.**

The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) Copy of rules.

A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Attendance of counsel.

Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) Censure and exclusion of counsel.

The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) Defamatory, degrading or incriminating evidence.

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

(f) Requests for additional witnesses.

Except as provided in this section and section 1975d(f) of this title, the Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses.

(g) Release of evidence taken in executive session.

No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than \$1,000, or imprisoned for not more than one year.

(h) Submission of written statements.

In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(i) Transcripts.

Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

(j) Witness fees.

A witness attending any session of the Commission shall receive \$4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of \$12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

(k) Restriction on issuance of subpoena.

The Commission shall not issue any subpoena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpoenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business (Pub. L. 85-315, pt. I, § 102, Sept. 9, 1957, 71 Stat. 634.)

§ 1975b. Compensation of members.

(a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of \$50 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of \$12

in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of \$12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards. (Pub. L. 85-315, pt. I, § 103, Sept. 9, 1957, 71 Stat. 635.)

§ 1975c. Duties; reports; termination.

(a) The Commission shall—

(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than 2 years from September 9, 1957.

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist. (Pub. L. 85-315, pt. I, § 104, Sept. 9, 1957, 71 Stat. 635.)

§ 1975d. Powers.

(a) Staff director; appointment and compensation; personnel and services.

There shall be a full-time staff director for the Commission who shall be appointed by the President by and with the advice and consent of the Senate and who shall receive compensation at a rate, to be fixed by the President, not in excess of \$22,500 a year. The President shall consult with the Commission before submitting the nomination of any person for appointment to the position of staff director. Within the limitations of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 552 of Title 5, but at rates for individuals not in excess of \$50 per diem.

(b) Services of voluntary or uncompensated personnel.

The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in paragraph (g) of section 1975a of this title shall be construed to mean a person whose services are compensated by the United States.

(c) Advisory committees.

The Commission may constitute such advisory committees within States composed of citizens of that State and may consult with governors, attorneys general, and other representatives of State and local governments, and private organizations, as it deems advisable.

(d) Exemption from conflict-of-interest statutes.

Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 281, 283, 284, 434, and 1914 of Title 18, and section 99 of Title 5.

(e) Cooperation With Federal agencies.

All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(f) Hearings; issuance of subpoenas.

The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpoenas for the attendance and testimony

of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 1975a (j) and (k) of this title, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

(g) Aid of courts in enforcing subpoenas.

In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there is to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof. (Pub. L. 85-315, pt. I, § 105, Sept. 9, 1957, 71 Stat. 636.)

STATE ADVISORY COMMITTEE

1959 NATIONAL CONFERENCE OF STATE ADVISORY COMMITTEES

Roundtables were held in five areas: housing; education; voting; general topics; and role of State advisory committees. General synopses of the roundtables are included in a conference report.

Reports of each State's advisory committee are also included. With few exceptions these reports are extremely brief—about one to five pages.

The following is a summary of the work of the advisory committees as set out in the report:

"FUNCTIONS AND RESPONSIBILITIES

"(a) Advise the Commission in writing of any knowledge or information it has of any alleged deprivation within its State of the right to vote and to have the vote counted, by reason of color, race, religion or national origin.

"(b) Attend as observers any open hearings the Commission may hold in its State.

"(c) Advise the Commission of all information concerning legal developments constituting a denial of equal protection of the laws under the Constitution.

"(d) Advise the Commission upon matters of mutual concern in the preparation of its final report.

"(e) Receive reports, suggestions and recommendations from individuals and public and private organizations interested in the matters which Congress has assigned the Commission, and forward to the Commission its analyses and evaluations of such reports and suggestions."

The Commission prepared questionnaires in the fields of voting, housing, and education to assist the advisory committees.

In 1961, a volume was printed containing the reports for 1961. With few exceptions these were quite brief.

INTERIM REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS

Pursuant to its statutory duty to submit reports to the President and to Congress at such times as either the Commission or the President shall deem desirable, the U.S. Commission on Civil Rights submits the following special report with respect to the status of equal protection of the laws in the State of Mississippi:

Since October 1962, the open and flagrant violation of constitutional guarantees in Mississippi has precipitated serious conflict which, on several occasions, has reached the point of crisis. The U.S. Commission on Civil Rights has become increasingly alarmed at this defiance of the Constitution. Each week brings fresh evidence of the danger of a complete breakdown of law and order.

Citizens of the United States have been shot, set upon by vicious dogs, beaten, and otherwise terrorized because they sought to vote. Since October, students have been fired upon, ministers have been assaulted and the home of the vice

chairman of the State Advisory Committee to this Commission has been bombed. Another member and his wife were jailed on trumped-up charges after their home had been defiled. Even children, at the brink of starvation, have been deprived of assistance by the callous and discriminatory acts of Mississippi officials administering Federal funds.

All this affronts the conscience of the Nation.

The Commission is fully aware that the administration has followed developments in Mississippi closely, that it has taken strong and vigorous action in assuring that violators of Federal law are prosecuted, and that court orders are enforced. Despite the diligent and aggressive handling of each case as it has arisen, the Nation must be concerned that the pattern of unlawful activity shows no sign of abating. Moreover, 9 years after the Supreme Court unanimously decided that segregation in public elementary and secondary schools violates the equal-protection clause of the Constitution, Mississippi has taken no step to comply with the law of the land.

Since its organization, the Commission has been deeply concerned with developments in Mississippi. Its hearing, scheduled for October 1962, in that State was first postponed at the request of the Attorney General of the United States, and finally canceled. On March 26, the Attorney General, after referring to the *Barnett* case, stated that:

"While this case is pending, I continue to hold the view that a public hearing in Mississippi by the Civil Rights Commission would not be appropriate. In the meantime, I hope that the work of the Commission staff can continue as in the past on the question of the operation of Federal programs in Mississippi as elsewhere."

Since October the Commission has received more than 100 complaints from Mississippi alleging denials of constitutional rights. Investigation of these complaints, reports of our State Advisory Committee and other evidence confirm the conclusion of the Commission that prompt and firm action is now required. The Commission has concluded unanimously that only further steps by the Federal Government can arrest the subversion of the Constitution in Mississippi.

The Commission notes the action taken by the President of the United States in employing the force necessary to assure compliance with the Court decrees in the *University of Mississippi* case. It is mindful of the unequivocal public statements of the President expressing his belief that discriminatory practices are morally wrong. The Commission, nevertheless, believes that the President should, consistent with his constitutional and statutory authority, employ to the fullest the legal and moral powers of his office to the end that American citizenship will not continue to be degraded in Mississippi. We urgently request that:

- (1) the President formally reiterate his concern over the Mississippi situation by requesting all persons in that State to join in protecting the rights of U.S. citizens, and, in accordance with his duty to take care that the laws be faithfully executed, by directing them to comply with the Constitution and laws of the United States;

- (2) the President continue and strengthen his administration's efforts to suppress existing lawlessness and provide Federal protection to citizens in the exercise of their basic constitutional rights; and

- (3) the Congress and the President consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State which continues to refuse to abide by the Constitution and laws of the United States; and, further, that the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi, until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States.

The people of Mississippi and of the other States should know that according to information available to the Commission in fiscal year 1962, the Federal Government received from all sources in Mississippi \$270 million. During the same period, payments from the Federal Government to the State, counties, municipalities, and individuals exceeded \$650 million for grant-in-aid programs, U.S. Corps of Engineers construction contracts, military prime contracts, and direct civilian and military payrolls. Examples of additional Federal programs benefiting Mississippi include area redevelopment loans and grants, small business loans, accelerated public works projects, and Federal Aviation Agency grants.

Massive assistance to the economy of Mississippi has continued past the time when the State placed itself in direct defiance of the Constitution and Federal court orders. For example, the National Aeronautics and Space Agency is proceeding with plans to build a \$400 million moon rocket engine test center in Pearl River and Hancock Counties, Miss.

Taking into account the need to comply with statutory requirements which limit the discretion of the executive branch, and recognizing that the location of large Federal installations must reflect national needs, the Commission believes there is an overriding constitutional obligation to make certain that Federal funds are expended in a manner which will benefit all citizens without distinction. The Federal Aviation Agency failed to take cognizance of such an obligation when it granted \$2,180,000 for the construction of a jet airport to serve Jackson, Miss., without questioning the airport's plan to build separate eating and restroom facilities.

The financial benefits accruing to Mississippi and its citizens as a result of Federal programs are necessarily financed by American citizens throughout the Nation. The Commission deems it appropriate and desirable that the legislative and executive branches of the Federal Government inquire into the moral and legal considerations arising out of a situation where, in large measure, the lawless conduct and defiance of the Constitution by certain elements in one State are being subsidized by the other States.

The Commission does not want the people of Mississippi, either Negro or white, to lose benefits available to citizens of other States. Rather, its goal is that all citizens in the United States be assured the full enjoyment of the rights guaranteed by the Constitution. It is upon adherence to that great charter with its powerful moral premises that our survival as a free society depends.

Respectfully submitted.

JOHN A. HANNAH, *Chairman*,
ROBERT G. STOREY, *Vice Chairman*,
REV. THEODORE M. HESBROUGH, C.S.C.
ROBERT S. RANKIN,
SPOTTSWOOD W. ROBINSON III,
ERWIN N. GRISWOLD.

APRIL 16, 1963.

WITH LIBERTY AND JUSTICE FOR ALL—AN ABRIDGMENT OF THE 1959 REPORT OF
THE U.S. COMMISSION ON CIVIL RIGHTS

INFORMATION, ADVISORY AND CONCILIATION SERVICES

Findings

A school system's easy adjustment to desegregation may be influenced by many factors such as the relative size and location of the white and Negro population, the extent to which Negro children are culturally handicapped, segregation practices in other areas of community life, and the character of community and State leadership.

Desegregation by court order has been more difficult than desegregation by voluntary action.

Many school districts, according to the Commission, have had no established and qualified source to turn to for information and advice about desegregation plans.

Recommendations No. 1 (a) and (b)

"* * * the Commission recommends: 1(a) That the President propose and the Congress enact legislation to authorize the Commission on Civil Rights, if extended, to serve as a clearinghouse to collect and make available to States and to local communities information concerning the Supreme Court mandate either voluntarily or by court order, including data as to the known effects of the programs on the quality of education and the cost thereof.

"1(b) That the Commission on Civil Rights be authorized to establish an advisory and conciliation service to assist local school officials in developing plans designed to meet constitutional requirements and local conditions; and to mediate and conciliate, upon request, disputes as to proposed plans and their implementation."

ANNUAL SCHOOL CENSUS

Findings

"No agency of the U.S. Government, other than this Commission, has collected data either on public school enrollment by race since the school year 1953-54, or on the existence of segregation or nonsegregation by policy or practice in the public schools of the Nation.

"The public school study of the Commission has been rendered difficult by the lack of such information within the Federal Government and by the policy, adopted by some States and school districts that maintained racially segregated schools immediately prior to May 17, 1954, to discontinue recording the race of pupils."

Recommendation No. 2.

"* * * the Commission recommends that the Office of Education of the Department of Health, Education, and Welfare, in cooperation with the Bureau of the Census of the Department of Commerce, conduct an annual school census that will show the number and race of all students enrolled in all public educational institutions in the United States, and compile such data by States, by school districts, and by individual institutions of higher education within each State. Further, that initially this data be collected at the time of the taking of the next decennial census, and thereafter from official State sources insofar as possible."

Statement of Commissioner Johnson concurring in recommendation No. 2.

"I have agreed to this recommendation with the understanding that it does not suggest or require that public educational institutions maintain school records by race and that the recommended school census can be taken without the maintenance of such records."

Supplementary statement on education by Vice Chairman Storey and Commissioners Battle and Carlton

The portion of the report on public education "* * * is to a large extent argumentative and colored by the author's views of the sociological and philosophical aspects of the school integration problem. It is based largely upon information supplied by school officials from five large 'border' cities which have integrated their schools. * * * Little acknowledgment has been given to different conditions found in large areas of the country where the problem is most acute.

"Further study and investigation should be made of the areas where school integration efforts run counter to long-established custom and traditions that formerly had legal sanction."

PROPOSAL TO REQUIRE EQUAL OPPORTUNITY AS A CONDITION OF FEDERAL GRANTS TO HIGHER EDUCATION BY CHAIRMAN HANNAH AND COMMISSIONERS HESBURGH AND JOHNSON

Institutions of higher education receive more than \$2 billion a year in Federal funds for educational purposes. Discriminatory admission policies and other practices are known to exist in a number of these institutions. "None of the Federal agencies administering these educational assistance programs require proof or an attestation of nondiscrimination by the institutions as a condition for the receipt of Federal funds."

Although the Congress has not conditioned these grants upon equal opportunity or nondiscrimination, the Federal Government is subject to the constitutional principle of equal protection of the laws. Inasmuch as the Supreme Court has held racial discrimination in public education to be a denial of equal protection and has required the immediate admission of qualified applicants to public institutions of higher education, the reasons for gradual elimination of discrimination in elementary and secondary schools do not apply to institutions of higher education.

"* * * We believe that it is inconsistent with the Constitution and public policy of the United States for the Federal Government to grant financial assistance to institutions of higher education that practice racial discrimination.

"We recommend that Federal agencies act in accordance with the fundamental constitutional principle of equal protection and equal treatment, and that these agencies be authorized and directed to withhold funds in any form to institutions of higher learning, both publicly supported and privately supported, which refuse, on racial grounds to admit students otherwise qualified for admission."

ADDITIONAL PROPOSAL BY COMMISSIONER JOHNSON

"While joining in the above proposal, I recommend that the policy set forth apply to all educational institutions that receive Federal funds, including public elementary and secondary school. * * *

Separate statement on conditional Federal grants for higher education by Vice Chairman Storey and Commissioners Battle and Carlton

"We oppose the recommendation that Federal agencies be authorized to withhold all public funds from institutions of higher learning (public and private) which refuse, on racial grounds, to admit students otherwise qualified for admission for the following reasons:

"1. The Commission has agreed that the preservation and improvement of education is a matter of great national interest, and is a fundamental principle within which the problems of equal protection must be evaluated. Therefore, we cannot conscientiously endorse a program which might well undermine that principle.

"2. Present problems of equal protection pertaining to education fall within the sweep of the 14th amendment, an area long since preempted by the courts. We cannot endorse a program of economic coercion as either a substitute for or a supplement to the direct enforcement of the law through the orderly processes of justice, as administered by the courts.

"3. Such a proposal by this Commission—as an agency of the Federal Government—would drastically affect the administration of privately owned institutions of higher education. Such action goes beyond the scope of the Commission's duties.

"4. Our staff studies were directed toward understanding and evaluation of equal protection problems in public and secondary schools, not private schools upon any level, and not institutions of higher education, whether public or private."

EQUAL PROTECTION OF THE LAWS IN PUBLIC HIGHER EDUCATION 1960—U.S.
CIVIL RIGHTS COMMISSION

GENERAL FINDINGS

(1) Discrimination by publicly controlled institutions of higher education on the grounds of race, religion, or national origin remains a serious national problem. Seventy percent of these institutions, by means of inquiries on their admission forms or other requirements connected therewith, provide themselves with information susceptible to use for discrimination in admission. Some institutions, both North and South, in fact, use the information so acquired to effect such discrimination.

In the academic year 1959-60, at least 86 of the 211 public higher educational institutions formerly for white students only in the 17 Southern States continued to exclude Negro applicants on the ground of race.

(2) Discrimination in admission policies and practices of public colleges and universities is principally directed against the American Negro.

(3) Although discontinuance of discrimination in admission policies and practices rests initially with the public institutions of higher education themselves, the Federal Government does have an obligation to prevent such discrimination.

FEDERAL FUNDS IN SUPPORT OF HIGHER EDUCATION

Findings

(1) The Federal Government's yearly expenditure for general support of colleges and universities and specific educational programs; for aid to students and teachers; and for research is estimated to be \$1.5 to \$2 billion.

(2) Insofar as applicants to public institutions of higher education are denied admission on the basis of race, religion, or national origin, they are also denied the opportunity to participate, directly or indirectly, in the benefits obtained by such institutions through the use of Federal funds.

(3) Insofar as the Federal Government disburses funds to public institutions of higher education which practice racial discrimination, it is violating the Constitution.

(4) It is unwise policy for the Federal Government to subsidize the unconstitutional operations of others—to do indirectly what it is not permitted to do directly.

(5) "It is not a sound policy for the Federal Government to disburse funds in such a manner that it increases the adverse effects on some citizens of equal protection of the laws by States and political subdivisions thereof."

(6) The Commission has found that programs of direct assistance to individual students on the basis of merit (National Science Foundation fellowships), need (National Defense Education Act students' loans), and Federal obligation (Veterans' Administration and war orphans' assistance) are not administered so as to be discriminatory on grounds of race, religion, or national origin.

(7) Other Federal programs in support of higher education, however, have the effect of supporting racial segregation. In five of the programs studied by the Commission, college housing, national defense fellowships, National Defense Education Act, educational media, National Science Foundation institutes, and agricultural research and extension, 62 percent or more of the funds expended in 7 selected Southern States went to institutions which exclude applicants solely on the basis of race. In five other such programs, National Defense Education Act counseling and guidance institutes, National Institute of Health grants under contract, National Science Foundation grants in support of basic research, Atomic Energy Commission grants for research fellowships and other training, 40 to 50 percent of the funds expended in the seven States were received by such institutions.

In fiscal year 1958 in 4 States which maintained complete segregation in higher education, the amount of Federal funds expended in support of white public institutions, per student enrolled, exceeded the amount expended for public Negro institutions by \$130.99 in Alabama, \$171.33 in Georgia, \$179.50 in Mississippi, and \$141.89 in South Carolina. The effect of this discrepancy is to contribute to the continuation of inferior segregated institutions and to magnify the disparity between the quality of public higher education offered to white students and that offered to Negro students in the four States maintaining complete segregation. The same situation exists in other States, but, owing to desegregation in some degree of one or more public colleges or universities, the effect on a statewide basis is not so great.

Recommendation 1.—The Commission recommends that the Federal Government take such measures as may be necessary to assure that funds under the various programs of Federal assistance to higher education are disbursed only to those public institutions of higher education that do not discriminate on the basis of race, color, religion, or national origin. Such measures should stipulate that no Federal agency or official shall be given the power to direct, supervise, or control the administration, curriculums or personnel of an institution operated and maintained by the State or a political subdivision thereof.

Concurring statements

Vice Chairman Storey: "This recommendation seems to assume that executive or administrative action to withhold such funds might be proper under some existing laws because broad powers are conferred upon some agencies or officials without legislative prohibition of such administrative action. Strong arguments can be made for the opposite point of view; namely, that had the Congress intended to curtail the distribution of Federal funds to institutions which discriminate in admission policies, it would have delegated such powers expressly and would have set forth specifically the conditions under which such funds should be withheld. It is reasonable to conclude that not having delegated such power Congress did not intend it to be assumed or exercised."

Commissioner Rankin: "I sincerely support the orderly and gradual achievement of equal protection of the laws for all citizens, and I recognize that the Federal Government has a responsibility to assure that the funds it disburses for any general welfare purpose are available on equal terms to all without regard to race, religion, or national origin. However, I must express my concern that this recommendation, if put into effect in an immediate and drastic fashion, would be interpreted by many citizens as a punitive measure rather than one in support of proper constitutional objectives. I am interested in promoting sound public education; I seek compliance with the Constitution, not the imposition of penalties. Additionally, if the conditioning of Federal funds were to result in widespread refusal to accept Federal assistance, those who would suffer would not be those who made the decision but the students who directly or indirectly benefit from Federal grants-in-aid to education.

"I, therefore, concur in this recommendation in principle but could not support certain procedures that would, in my mind, be unwise means of implementation."

Dissenting statement of Commissioner Carlton

"* * * As to recommendation No. 1, it is my opinion that this objection will not be attained by any action which has the effect of withholding funds from institutions that do not conform to a Federal pattern. The withholding of such funds is to me unsound from a political, governmental, and moral standpoint. I cannot approve the withholding of money, coming as it does to the Federal Government from the taxpayers of the several States, as a club to forge any fixed pattern set forth by a Federal agency. Such action would impede rather than advance public higher education. It would also create resentment and ill will to the injury of both races. Progress can be made on the basis of good will without such arbitrary action."

ENFORCEMENT OF CONSTITUTIONAL RIGHTS

Findings

Court action for admission to a public college or university is a long, arduous, and costly affair. The average length of such suits in the Federal courts since May 1954, is slightly more than 2½ years.

In cases involving a challenge to the constitutionality of a State statute, the Congress, in order to assure an adequate hearing and full deliberation of the issue, has provided for an expeditious hearing by a court composed of three judges, and a direct appeal to the U.S. Supreme Court. Such a procedure could be extended to include cases presenting a factual issue of denial of equal protection of the laws and would promote speedy and correct determination of such cases.

Recommendation 2.—The Commission recommends that Congress consider the advisability of authorizing three-judge courts under section 2284 of the United States Judicial Code (United States Code, title 28) in cases presenting a substantial factual issue as to whether persons are being denied equal protection of the laws with respect to public education.

Dissenting statements

Vice Chairman Storey: "This recommendation affects jurisdiction of the Federal courts which should not be disturbed. Delays in litigation are often due to causes other than jurisdiction. In vesting a factfinding function in the three-judge Federal court for all public education cases it is, in fact, recommending the transfer of the duties of the U.S. district courts to other Federal courts."

Commissioner Carlton: "I see no reason for this recommendation. Our courts are ample and are proving repeatedly that the problem is being handled efficiently."

AFFIRMATIVE FEDERAL ACTION TO ALLEVIATE ACADEMIC HANDICAPS

Findings

1. The overall effect of segregation has been to give a substantial portion of the population the opportunity to obtain only an inferior education. Moreover, the effects of segregation are self-perpetuating.

2. It is the national interest in this time of world crisis to educate and train all citizens to the utmost of their abilities and talents.

3. Federal programs aimed at improving the quality of education have been of little value to Negroes in some Southern States because of the discriminatory admission policies of the institutions in which they were sponsored. Affirmative attack against inferior educational opportunities is needed "to break the vicious circle of self-perpetuating inferiority."

4. Programs could be designed to raise the quality of education throughout the Nation by giving assistance to persons, both teachers and students, who have potential talent but are academically handicapped as a result of the inferior educational opportunities that have been available to them. Such programs might include, among others: (1) institutes to improve the competence of public school teachers in English, history, and social sciences, similar to those now sponsored in science, mathematics, and foreign languages; (2) summer institutes conducted by public colleges for incoming students of potential ability whose academic preparation is inadequate for college-level work; (3) special academic-year institutes conducted by colleges and universities or by outstanding secondary schools for talented but academically deficient high school graduates to prepare them for college.

Recommendation 3.—The Commission recommends that the Federal Government sponsor in the States, upon request from those States, educational programs

designed to assist public school teachers and students of native talent and ability, who are handicapped professionally or scholastically as a result of inferior educational opportunity and training.

The Commission believes that such programs should be implemented without direction, supervision, or control by any Federal agency or official of the personnel, curriculums or administration of any education institution not operated and maintained by the Federal Government.

Additional proposals of Chairman Hannah and Commissioners Hesburgh and Johnson on Federal funds to private colleges

Chairman Hannah and Commissioners Hesburgh and Johnson propose that "the Federal Government, either by Executive or, if necessary, by congressional action, take such measures as may be required to assure that funds under the various programs of Federal assistance to higher education are not disbursed to any public or private institution of higher education which discriminates on grounds of race, religion, or national origin.

Enforcement of constitutional rights

Chairman Hannah and Commissioners Hesburgh and Johnson propose that "the Congress consider the advisability of granting the Attorney General statutory authority to institute, or intervene in civil actions to enforce the constitutional rights of individual persons not to be denied equal protection of the laws with respect to public higher education.

Separate statements of Vice Chairman Storey and Commissioners Carlton and Rankin with regard to granting additional powers to the Attorney General

Vice Chairman Storey: "This proposal differs little from some previously considered and rejected by the Congress. Additional specific powers were given the Attorney General by the Civil Rights Act of 1960. No additional powers should be considered until these are fully tested."

Commissioner Carlton: "I also am opposed to arming the Attorney General with any additional authority to institute civil suits. We have ample laws to meet this situation, as is being proven day after day."

Commissioner Rankin: "I know that existing procedures place a great burden both financially and personally upon the individuals seeking to realize their constitutional rights. But I cannot support the proposal because it would vest unlimited power in the Attorney General to bring legal action in the name of the United States to enforce the rights of individuals whenever and wherever he might decide such action was appropriate. Without some express limitation this would grant excessive power to a single member of one branch of the Federal Government."

CIVIL RIGHTS, UNITED STATES OF AMERICA, PUBLIC SCHOOLS NORTH AND WEST, 1962

NOTE.—This report contains no recommendations or proposals by the Commission. It does, however, contain reports on the progress or lack of progress in public school desegregation in several northern and western cities.

The scope of these reports and the manner in which they were prepared are described in the Introduction on page 2 of the volume, as follows:

"* * * These studies were prepared for the Commission, under contract, by lawyers then living in or near the community studied, except for Highland Park which was the work of the Commission staff [based primarily on the transcript of a hearing on a motion for a preliminary injunction]. The work was supervised and coordinated by the Public Education Section of the Commission staff. To the greatest extent possible, editing of reports prior to publication was done in consultation with the individual reporters."

The contracts under which the reports on New Rochelle, N.Y.; Philadelphia, Pa.; Chicago, Ill.; and St. Louis, Mo., were prepared, provided for a reimbursement not to exceed \$2,500. The cost of each report is listed below:

New Rochelle report by John Kaplan, Northwestern University Law School.....	\$2,300.00
Philadelphia report by Albert P. Blaustein.....	1,881.75
Chicago report by John E. Coons, Northwestern University Law School.....	2,345.00
St. Louis report by Wylie H. Davis, University of Illinois Law School.....	2,500.00

REPORT ON EDUCATION, 1961

In preparing its 1961 report on education, the Commission on Civil Rights obtained information through its own hearings, conferences, investigations, surveys and related research. Additionally, numerous Federal, State, and local agencies and private organizations cooperated in the Commission's work. State advisory committees, established by the Commission pursuant to the Civil Rights Act of 1957, were another source of information. The Commission conducted its Second Annual Conference on Problems of Schools in Transition on March 21 and 22, 1961, at Gatlinburg, Tenn., and a third conference on the same subject was held on February 25 and 26, 1961, at Williamsburg, Va. These hearings have been printed and distributed.

The Commission's 1961 recommendations on education are based upon information, summarized in chapter 12 beginning on page 173, which indicates that, between 1959-61, 44 school districts in the 17 Southern and Border States initiated desegregation programs. Thirteen of these districts acted under court order and 15 more acted while suits were pending.

In 1961 there were 2,062 southern school districts, enrolling both white and Negro pupils, which according to the Commission, had not begun to comply with the Supreme Court's rulings in the school segregation cases. As of that time, 775 school districts had begun desegregation. In many of these districts, according to the Commission, actual desegregation is minimal. The Commission reports that " * * * only 7 percent of all Negroes enrolled in public schools in the 17 Southern States attended school with white pupils in 1960-61, whereas 27 percent of the school districts have made some start toward compliance with constitutional requirements."

In the typical public school desegregation case, several years elapse between the initial court decision and the actual admission of Negro pupils on a non-discriminatory basis.

Recommendations 1 and 3 which are intended to facilitate voluntary desegregation and to expedite court action in desegregation cases, would appear to be based upon the Commission's findings of (1) a continuation of the trend toward desegregation by court order, and (2) the extended waiting period between actual admission of Negroes to formerly segregated schools and the initial court decision ordering such admission.

"Recommendation 1.—That the Congress enact legislation making it the duty of every local school board which maintains any public school from which pupils are excluded on the basis of race, to file a plan for desegregation with a designated Federal agency within 6 months after the adoption of such legislation, said plan to call for at least a first step toward full compliance with the Supreme Court's decision in the school segregation cases at the beginning of the following school year, and complete desegregation as soon as practicable thereafter. Further, that Congress direct the Attorney General to take appropriate action to enforce this obligation.

"Recommendation 3.—That Congress consider the advisability of adopting measures to expedite the hearing and final determination of actions brought in Federal courts to secure admission to publicly controlled educational institutions without regard to race, color, religion, or national origin."

Recommendation 2, which sets forth a formula for the withdrawal of Federal funds used to support segregated educational facilities, would appear to be based upon the Commission's finding that Federal funds are now granted public school systems which operate schools in a manner that denies pupils equal protection of the laws on the ground of race, color, religion, or national origin.

Dissent to recommendation 2 by Commissioner Rankin

"Although this recommendation does not provide for the withholding of all funds from public schools * * * its net effect might be punitive. I do not believe that schoolchildren should be made to suffer for the errors of their elders.

"Recommendations requiring the withholding of funds from States which are not completely desegregated would warrant serious consideration only if there were no other way to achieve conformity with the Constitution without penaliz-

¹ Recommendation 3 reaffirms in principle one made by the Commission in its "Higher Education Report." At that time the Commission suggested the use of three-judge courts to expedite final determinations in desegregation cases at the college level. Since there are additional ways that desegregation cases may be expedited, the Commission has now framed its recommendation in general terms and expanded it to include desegregation cases at the elementary and secondary school levels as well.

ing students. Many of the other recommendations in this report are designed to bring about desegregation without harming education.

"Thus I dissent from recommendation 2 because I believe it to be unnecessary and potentially punitive."

Desegregation has focused attention on the gap between the scholastic achievement of the average white and the average Negro pupil of the same age and grade level. The Commission studied programs in the Northern, Western, and Border States which are designed to close this gap by offering educational opportunity to fit the special needs of minority group children. The positive results of such programs prompted recommendation 4, which urges the Congress to provide technical or financial assistance to local school systems or citizens' groups to establish programs to facilitate desegregation.

"Recommendation 5.—That the Congress enact legislation authorizing loans to local school districts from which State or local financial aid has been withdrawn as a result of desegregation, or whose ability to borrow funds from commercial sources has been cut off by State or local action, said loans to be repayable by the borrower upon the receipt of the State or local aid withheld or the restoration of commercial credit."

This manifestation of opposition to desegregation is the basis for recommendation 5 which proposes legislation authorizing loans to local school districts from which State or local financial aid has been withdrawn or whose ability to borrow funds from commercial sources has been cut off by State or local action.

According to the Commission, no Federal agency is charged with the duty of disseminating information concerning desegregation plans, problems, and possible solutions; assisting local school officials in formulating plans to meet local conditions; or of using its good offices to mediate and conciliate disputes. Recommendation 6 would give these responsibilities to the Commission.

"Recommendation 7.—That the President or the Congress direct the Attorney General to take such action as may be appropriate, in any case where a school system is operating under a plan to bring it into conformance with the requirements of the 14th amendment, to protect the school board members carrying out such plan, supervisory officials and teachers in school systems executing the orders of such school boards, schoolchildren of both races attempting to attend schools affected by the plan and their parents; and citizens helping such children or their parents, from bodily harm, harassment, intimidation, and/or reprisal by officials or private persons."

Recommendation 8 is based upon the Commission's findings that military dependents are sometimes required to attend segregated schools, particularly in Georgia, Louisiana, Mississippi, and South Carolina, because there are no on-base schools. The Commission believes that, inasmuch as the Congress has recognized the responsibility of the Federal Government to provide suitable education for the dependents of military personnel on active duty, segregated schools are unsuitable for this purpose since they are, under the Supreme Court's ruling, contrary to the Constitution. Therefore, it recommends that a survey be made of the status of integration in schools attended by dependents of military personnel, and that the President make suitable arrangements for their education in schools open to all races.

The Commission notes that some public libraries in the 17 Southern States which receive aid under the Library Services Act of 1956 do not serve whites and Negroes on an equal basis, despite the fact that such a policy is contrary to the provisions of the act. The Commission's recommendation 9, therefore, suggests that funds be withheld from libraries which do not comply with the provisions of the act.

Recommendation 10 asks the adoption of Federally sponsored programs to assist teachers and students of native talent and ability who are handicapped professionally or scholastically as a result of inferior educational opportunity.

Recommendation 11 advocates legislative or executive measures to assure that funds under the various programs of Federal assistance to higher education be disbursed only to those public institutions of higher education that do not discriminate on grounds of race, color, religion, or national origin.

Recommendation 12 advocates the compilation of number and ethnic classification of all students enrolled in all public educational institutions in the United States for use in studying practices in Northern, Western, and Border States that may constitute a denial of equal protection of the laws.

SUMMARY OF 1961 REPORT ON THE AMERICAN INDIAN

No comprehensive study of Indian affairs was undertaken due to commitment of staff to other inquiries. However, the Commission did undertake a field investigation, interview tribal delegations and hold conferences with experts on Indian affairs. Furthermore, at its hearings in California in June 1960 testimony was received by the Commission regarding deprivation of rights of Indians in that State.

The Commission made no recommendations in this area, but made various findings; among them are the following:

1. By and large Indians are free to register to vote and cast their ballots.
2. While the bulk of Indian children have been accepted in white public schools, some States have denied admission to Indians because of race. (Mississippi, Louisiana, and North Carolina were particularly mentioned. See pp. 142-144.)
3. Some State and local governments discriminate against Indians in the administration of welfare benefits.
4. In some instances, States have not provided reservation Indians with adequate law enforcement. This is the result of the fact that pursuant to law the Federal Government has given jurisdiction over law and order on reservations to the States. Allegedly due to lack of funds, the States have been unable to police these areas.
5. Reservation and nonreservation Indians are treated unfairly by courts and police in some localities.
6. Nonreservation Indians suffer the same type of discrimination as do other minorities in housing and employment opportunities.
7. Indians apparently are not denied access to transportation facilities.
8. Because Indian tribal governments are not subject to the limitations of the Bill of Rights and the 14th amendment, some such governments have deprived their subjects of freedom of religion.

SUMMARY OF RECOMMENDATIONS MADE BY COMMISSION ON CIVIL RIGHTS IN ITS 1961 AND 1959 REPORTS ON VOTING

"Recommendation 1.—Congress should declare that voter qualifications other than age, residence, confinement, and conviction of a crime are susceptible to use, and are being used, to deny the right to vote on grounds of race or color. It recommends that Congress enact legislation providing that citizens shall not be denied the right to vote, or to register to vote in Federal or State elections for any cause except for inability to meet reasonable age or length-of-residence requirements, uniformly applied, legal confinement at the time of registration, or prior conviction of a felony."¹

Two Commissioners dissented from this recommendation. Vice Chairman Storey disagreed with this recommendation because of the constitutional requirement that qualifications of electors be left to the States and because of the Attorney General's powers to enforce laws guaranteeing the right to vote under the Civil Rights Acts of 1957 and 1960. He felt that existing legislation was sufficient and that the conditions peculiar to each State justify the State's determining qualifications for its own voters. Commissioner Rankin concurred in this dissent.

Recommendation 1 was based on findings by the Commission that "discriminatory applications of legal qualifications for voters" are being used arbitrarily to deny the vote to Negroes. Among the qualifications enumerated are: literacy tests; satisfactory interpretations of the Constitution; calculations of the applicant's age to the day; and the requirement that the person be of "good character." The Commission concluded that Congress, under the power of sections 2 and 5 of the 14th amendment and under section 2 of the 15th amendment, may, upon a finding that these qualifications were applied by the States in a manner that denied the right to vote on grounds of race, prohibit the use of such qualifications.

Restrictive laws, according to the Commission, have operated to deny the right to vote in Mississippi and Louisiana. The Commission made its most detailed study in Louisiana, where it held 4 days of hearings. The witnesses

¹ See also the Commission's recommendation in 1959 for a constitutional amendment, p. 4.

were white registrars and Negroes who had attempted to register to vote. The registration practices of 11 parishes were the subject of testimony in the Commission hearings.

The combination of the laws themselves and the practices of registrars, who were allowed wide discretion, operated to deny Negroes the right to vote.

"Recommendation 2.—The completion of the sixth grade in elementary school should be sufficient qualification for voting in all States where a 'literacy' test, an 'understanding' or 'interpretation' test or an 'education' test is administered."

This recommendation was adopted unanimously by the Commission as a remedy for the same discrimination which prompted the first recommendation. The evidence and testimony elicited in Louisiana in 1960 and 1961 also served as the basis for this recommendation by the Commission. The registration practices of voting registrars from 11 parishes indicated to the Commission that white persons were given much easier tests and the registrars were much more lenient in grading their answers.

"Recommendation 3.—The Commission unanimously recommended 'that Congress amend 42 U.S.C. section 1971(b) to prohibit any arbitrary action or (where there is a duty to act) arbitrary inaction, which deprives or threatens to deprive any person of the right to register, vote, and have that vote counted in any Federal election.'"

This recommendation was intended to outlaw various practices allegedly being used to deny the right to vote. These practices were the requirement that a specified number of registered voters vouch for the identity of registration applicants; the rejection of applicants (or the removal of voters) on grounds of minor technical errors in the completion of required forms; refusal or failure to notify registrants whether they have been registered; delays in the registration process; assistance to some applicants but not to others; and the imposition of unduly technical requirements for identification of prospective voters. The Commission found that, while these arbitrary methods may not be discriminatory on their face (since they could well be applied to all new registrants), they serve to deny the franchise to the unregistered—nearly all Negro—citizens of these counties. Therefore, these methods of interfering with the right to vote constitute grounds for congressional legislation under the 15th amendment.

The testimony and evidence received in the two series of Louisiana hearings also provided the basis for recommendation 3. Arbitrary registration procedures were found to be the most prevalent form of discrimination in voting. Documented proof from 11 Louisiana parishes constituted the basis of evidence for the Commission's finding regarding these arbitrary registration procedures.

The Commission in 1959 first proposed this recommendation as a result of its investigations in two Alabama counties.

"Recommendation 4.—This relates to 'dilution of the right to vote' by means of gerrymandered and malapportioned voting districts. The Commission proposed Federal legislation requiring that districts of roughly equal population be established for representatives to both State and Federal legislatures."

If this recommendation were implemented the adjudication of equality in size of voting districts would be left to the Federal courts, without, however, precluding the State courts from enforcing rights provided under State law regarding elections.

While the Commission concedes that malapportioned districts are to be found in nearly every State in the Union, it nevertheless found that in some instances, malapportionment of legislative districts effectively denies the vote to qualified Negroes. Support for its recommendation is found in Congress requirement of substantially equal congressional electoral districts, and also in the enforcement section of the 14th amendment, which would enable Congress to insure equal protection of the laws.

"Recommendation 5.—The Commission recommended that Congress enact laws directing the Census Bureau to compile a count of persons of voting age in every State and territory by race, color, and national origin, who are registered to vote and determine the extent to which such persons have voted since January 1, 1960. The Census Bureau would continue such a compilation with each succeeding census."

The Commission recommended the collection of these voting statistics because of their value in examining problems of discrimination. Furthermore, in some cases, these figures may in themselves be evidence of discrimination.

A national census count would fill a void because many State's voting and registration statistics are incomplete, unofficial, or unavailable.

This recommendation was also proposed in the Commission's 1959 report.

1959 REPORT

In addition to the two recommendations mentioned earlier, the Commission in 1959 recommended:

"Recommendation 2.—Voting records should be preserved for a period of 5 years so that they can be examined for possible denials of the right to vote. Complaints received from Alabama and Louisiana could not be verified in some instances by the Commission and investigators; thus it was felt that a congressional requirement of the retention of voting records was necessary."

This recommendation was enacted as part of the 1960 Civil Rights Act.

"Recommendation 4.—The Commission recommended legislation requiring witnesses to testify at Commission hearings. It proposed that in 'cases of contumacy or refusal to obey a subpoena' issued by the Commission, 'for the attendance and testimony of witnesses or the production of written or other matter,' the U.S. district court may be applied to for issuance of an order enforcing the subpoena."

This recommendation was necessary, according to the Commission, because of the lack of cooperation by numerous State officials at the Montgomery hearings in December 1958.

"Recommendation 5.—The Commission proposed the President be allowed to appoint election registrars who would administer the State qualifications for elections and issue certificates to qualified citizens. Such certificates would enable the voter to select his choice of Federal officers and Members of Congress, but would not apply necessarily to State elections. Under this recommendation, the Commission would investigate voting cases, and upon a determination of the validity of complaints, recommend to the President that registrars should be appointed in the jurisdiction involved."

This recommendation was prompted by the Commission's finding that there were insufficient remedies available under existing law to facilitate registration by Negroes. The appointment of Federal registrars would remedy situations such as that existing in Macon County, Ala., where the local registrars had resigned, rather than be sued under provision of the 1957 act for refusal to register qualified Negroes.

Commissioner Battle dissented to this recommendation.

The final proposal of the 1959 report was a constitutional amendment to establish universal suffrage. It was objected to by Commissioners Battle, Carlton, and Storey. The amendment follows:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State or by any person for any cause except inability to meet State age or length-of-residence requirements uniformly applied to all persons within the State, or legal confinement at the time of registration or election. This right to vote shall include the right to register or otherwise qualify to vote, and to have one's vote counted. The Congress shall have the power to enforce this article by appropriate legislation."

Chairman Hannah and Commissioners Hesburgh and Johnson enumerated the reasons for this proposal. They cited the complex voter qualification laws, the discriminatory application and administration of these laws by local officials, the decline of illiteracy in the United States, and the successful operation of more lenient qualifications by a number of States, as sufficient proof of the merit of the proposed amendment.

Commissioners Battle, Carlton, and Storey objected to the proposed amendment because—

(1) Other recommendations, if enacted, would be sufficient to eliminate discrimination.

(2) There was no proof that less drastic remedies would not attain this same objective.

(3) The Constitution as written allowed sufficient authority for the Federal Government to deal effectively with denials of the right to vote.

(4) The impact of such a far-reaching proposal and the evidence available had not been examined sufficiently by the staff of the Commission.

SUMMARY OF 1961 CIVIL RIGHTS COMMISSION RECOMMENDATIONS RELATING TO EMPLOYMENT

Recommendation 1. The Commission recommended that Federal statutory authority be granted to the President's Committee on Equal Employment Opportunity or that an entirely new agency with such authority be established empowering it to (1) encourage and enforce a policy of equal employment opportunity in all Federal and federally supported employment; (2) promote and enforce a policy of equality of opportunity in the availability and administration of all federally assisted training programs and recruiting services; and (3) encourage and enforce a policy of equal opportunity applying to labor unions which operate directly or indirectly under the Federal funds, contracts, or grants-in-aid.

This recommendation and the ones that follow were prompted by the Commission's general findings that while promotion of Negroes to higher occupational levels has taken place during the past 20 years, there still remain disproportionately high numbers of Negroes in unskilled and semiskilled jobs. The Commission states the reasons as being "due in some degree to present or past discrimination in employment practices, in educational and training opportunities, or both" (p. 159). Since it is the declared, but not yet effective, policy of the Federal Government to promote equal opportunity in most areas of Federal Government involvement, and since Federal Government funds and training programs affect employment opportunities for millions of persons, the Commission directs its recommendations to the goal of achieving more equitable employment opportunities.

With particular regard to the Committee on Equal Employment Opportunity, the Commission found that its potential effectiveness was limited since it operates under a stringent budgetary ceiling with little legal authority. Expansion of the Committee's activities should include the following:

(1) surveys of Government agencies and contractors to determine employment and recruitment statistics of minorities.

(2) appointment of full-time officials in the various departments and agencies who would review employment practices and enforce the objectives of the Federal Government on hiring and training of Negroes for employment.

(3) encouraging the implementation of nondiscriminatory employment through conferences with lower echelon personnel explaining methods of achieving the goal of equal opportunity for employment.

(4) maintenance of and circulation to States of a current list of Government contractors.

(5) holding responsible these contractors which defer hiring to labor unions for acts of job discrimination on the part of the unions.

(6) "requesting the Secretary of Labor to require State employment offices to report to the Committee on Equal Employment Opportunity all discriminatory job orders placed by Federal agencies and Government contractors."

Recommendation 2 was made to achieve equality of treatment for members of the Armed Forces, including the National Guard and student training programs. The Commission suggested an Executive order requiring equality of treatment and opportunity and directing that statistics be compiled of Negro membership in the services and their student training programs.

The Commission conceded that "current statistics regarding representation of minority groups are not generally available" (p. 159). Nevertheless, it concluded that in some Reserve or National Guard units either outright exclusion of Negroes is practiced or segregated commands exist. In spite of the fact that the National Guard is financed principally by Federal funds, no action has been taken to desegregate the Guard.

The Commission investigation which led to these conclusions and recommendations consisted of questionnaires submitted to State Advisory Committees.

Recommendation 3 was directed to grant-in-aid projects. The Commission proposed that the President issue an executive order emphasizing clearly that employment supported by Federal funds is subject to the same nondiscrimination policy applicable to employment by Government contractors.

In its findings, the Commission noted that, although grants-in-aid are similar to direct contracts in all pertinent respects, there was no uniform Federal policy requiring nondiscrimination in employment. A uniform policy imposed by the President would resolve questions about the scope of Executive Order 10925 which prohibits discrimination in employment under Government contracts.

The Commission's conclusions were drawn from studies which it made of the following six grant-in-aid programs: aid to schools in impacted areas; aid for school construction; hospital construction; airport construction; highway construction; and low-rent housing and slum clearance. From its studies of bureau policies, the Commission determined that widely divergent attitudes on job discrimination are held by the administering agencies. For instance, the HHFA which administers the slum clearance grants-in-aid, interprets Executive Order 10925 as applying to employment practices of slum-clearance contractors; on the other hand, the Department of HEW has imposed no nondiscriminatory employment requirement on either of the school programs which it administers.

Recommendation 4.—The Commission recommended the expansion of Federal programs in vocational education and apprenticeship training and proposed the initiation of a program for retraining jobless workers with allowance for funds to be advanced to workers who must change their place of employment. These programs, as proposed by the Commission, would be administered on a nondiscriminatory, nonsegregated basis.

The Commission noted the dearth of qualified Negroes for new openings in employment. It placed the blame for this on: (1) The unwillingness of nonwhites to apply for jobs that were traditionally closed to them; (2) lack of publicity about job openings; and (3) lack of motivation for Negroes to train in jobs they know will not be open to them.

The Commission felt that a vigorous program of training and recruitment would serve to alleviate part of the denial of employment opportunities to Negroes.

Based on its study of Federal administrative procedures governing the vocational training and recruitment programs, the Commission concluded that discriminatory employment practices were perpetuated since:

(1) admission to vocational classes (supported by Federal funds) is conditioned on an applicant's "chances of securing employment."

(2) part-time education, contingent on the worker's employment at the time, is denied to nonwhites who cannot obtain the type of employment requisite for enrollment in part-time classes.

(3) the control of admission to apprenticeship programs by labor organizations and employers that practice discrimination, deprives Negroes of apprenticeship training.

(4) although the Federal Government bears the entire cost of administering State employment offices, it has done little to assure that the policies of the program—to encourage merit employment and to discourage employment discrimination—are being effectuated. In addition, Federal money is being used to perpetuate discrimination in States where segregated offices or services are maintained and where discriminatory job offers are handled.

The Commission's studies in the field of apprenticeship, recruitment, and employment education were made in four cities: Atlanta, Baltimore, Detroit, and St. Louis. Its study on the State-administered employment offices apparently included every State.

Recommendation 5.—Congress should enact legislation to provide equality of training and employment opportunities for youth.

(1) Through Federally subsidized employment and training, and

(2) Through appropriating funds for special placement programs in the schools.

Recommendation 6.—The Commission proposed that an information program be instituted to inform Negroes about the policy of nondiscrimination in Federal employment.

This recommendation was apparently based on the finding mentioned earlier that Negroes often fail to apply for jobs that are open to them.

Recommendation 7.—That steps be taken, either by Executive or congressional action, to reaffirm and strengthen the Bureau of Employment Security policy, in rendering recruitment and placement services, of encouraging merit employment and assisting minority group members in overcoming obstacles to employment and in obtaining equal job opportunities. In this connection, consideration should be given to changing the method utilized to determine Federal appropriations to State employment offices, presently keyed primarily to the number of job placements made, to reflect other factors (such as the greater degree of difficulty and time involved in placing qualified minority group workers), so that the budgetary formula used will encourage rather than discourage referral on a nondiscriminatory basis. In addition, regulations and statements of

policy with respect to the operation of State employment offices should be re-examined to insure that such regulations and statements conform to the overall USES policy of discouraging employment discrimination and encouraging merit employment."

Recommendation 8.—That the President direct the Secretary of Labor to grant Federal funds for the operation of State employment offices only to those offices which offer their services to all, on a nonsegregated basis, and which refuse to accept and/or process discriminatory job orders.

Recommendation 9.—The Commission proposed that the Labor-Management and Disclosure Act of 1959 be amended to include a provision that no labor organization shall refuse membership to, segregate, or otherwise discriminate against any person on grounds of race, color, or national origin.

This, according to the Commission, would fill a void which now exists in Federal law. At present the law specifically prohibits discrimination by labor unions.

Many unions, particularly those engaged in the crafts and building construction, have failed to eliminate discrimination in job opportunities to Negroes. The Commission studied conditions in three cities and collected information from many union locals to provide the basis for its recommendation and findings.

SUMMARY OF 1961 REPORT ON JUSTICE

Three areas were investigated. These were unauthorized police violence, "private" violence, and exclusion from jury service. Private violence appears to be violence perpetrated by private citizens unimpeded by law enforcement officers who take no preventative measures. In these two areas numerous factual instances of such violence are reported; they include examples from both North and South. Generally, the victim is Negro, although there are instances involving American Indians and Caucasians. Examples of exclusion from jury service are limited to a few Southern States.

The report concludes that existing remedies are inadequate to meet the situation.

Federal criminal remedies for unlawful official violence are inadequate because: "of difficulties inherent in the cases such as the problem of proof; the policies and procedures of the Department of Justice; and weaknesses of the statutes."

Specifically:

"1. Among the policies and procedures of the Department of Justice that have hampered Federal criminal prosecutions for unlawful official violence have been excessive reliance on signed complaints from aggrieved individuals despite the fact that many victims of police misconduct are unaware of their rights, or fearful to press them; a tendency to close some cases without complete investigation; and deference to State authorities which results in withholding any investigation pending State action even at the risk of allowing evidence to grow stale.

"2. FBI agents charged with the duty of civil rights acts investigations, are sometimes placed in a difficult position when they must investigate allegations of misconduct against local policemen. The cooperation of local officers is essential to the FBI in investigating and apprehending those who violate Federal criminal statutes not related to civil rights. Moreover, victims and witnesses of police misconduct are sometimes hesitant to give information to Federal authorities because of the cooperative relationship between the FBI and local policemen.

"3. Difficulties also arise from the language of section 242, as interpreted by the Supreme Court in *Scoville v. United States*. The requirement of "specific intent"—as opposed to the usual general criminal intent—for conviction under the statute severely limits the statute's applicability."

Federal civil remedies are inadequate because: One deterrent to the filing of civil suits is the fact that even if a victim of official violence sues successfully, few police officers are able to satisfy a substantial money judgment. Successful suits are rare.

To remedy these defects the Commission suggests:

"1. That Congress consider the advisability of enacting a companion provision to section 242 of the United States Criminal Code which would make the penal-

ties of that statute applicable to those who maliciously perform, under color of law, certain described acts including the following:

- "(a) subjecting any person to physical injury for an unlawful purpose;
- "(b) subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody;
- "(c) subjecting any person to violence or unlawful restraint in the course of eliciting a confession to a crime or any other information;
- "(d) subjecting any person to violence or unlawful restraint for the purpose of obtaining anything of value;
- "(e) refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place;
- "(f) aiding or assisting private persons in any way to carry out acts of unlawful violence.

"2. That Congress consider the advisability of amending section 1983 of title 42 of the United States Code to make any county government, city government, or other local governmental entity that employs officers who deprive persons of rights protected by that section, jointly liable with the officers to victims of such officers' misconduct."

The Commission, noting the fact that few charges of police violence are brought against Federal law enforcement officers and many are brought against State law enforcement officers, suggests that a program to improve the caliber and training of State law enforcement officers might be helpful in decreasing incidents of police violence. It therefore suggests the following program:

"That Congress consider the advisability of enacting a program of grants-in-aid to assist State and local governments, upon their request, to increase the professional quality of their police forces. Such grants-in-aid might apply to the development and maintenance of (1) recruit selection tests and standards; (2) training programs in scientific crime detection; (3) training programs in constitutional rights and human relations; (4) college level schools of police administration and (5) scholarship programs that assist policemen to receive training in schools of police administration."

Regarding the problem of exclusion from jury service the Commission found that "the burden of combating such racial exclusion from juries now rests entirely on private persons—almost invariably defendants in criminal trials."

"Only criminal remedies are available to the Federal Government to combat unconstitutional jury exclusion. The Federal Government has successfully invoked a criminal statute only once, in the late 1870's."

The Commission therefore suggests that:

"Congress consider the advisability of empowering the Attorney General to bring civil proceedings to prevent the exclusion of persons from jury service on account of race, color, or national origin."

CIVIL RIGHTS, UNITED STATES OF AMERICA, PUBLIC SCHOOLS, SOUTHERN STATES, 1962

NOTE.—This report contains no recommendations or proposals by the Commission. It does, however, contain reports on the progress and the lack of progress in public school desegregation in several Southern States.

The geographical scope of this report and the manner in which it was prepared are described in the introduction on page 1 of the report, as follows:

"* * * the Commission decided to undertake a series of studies in individual Southern States. The first of this series which, includes reports on the States of Kentucky, North Carolina, Tennessee, and Virginia follows. Each of these reports was prepared for the Commission, under contract, by a lawyer who is a member of the faculty of a law school of the State on which he reports, except for the Memphis portion of the Tennessee report. In the case of Memphis the reporter, a consultant to the Commission, was not a resident of the State, but he had visited Memphis regularly over a period of 3 years studying developments there. The work was supervised by the Public Education Section of the Commission staff. To the greatest extent possible, editing of reports prior to publication was done in consultation with the individual reporters."

The contracts under which the reports on Kentucky, North Carolina, Tennessee, and Virginia were prepared, provided for a reimbursement not to exceed \$2,500. The cost of each report is listed below:

Kentucky report by Laurence W. Knowles, University of Louisville----	\$1, 894. 0
North Carolina report by Richard E. Day, University of North Carolina Law School-----	1, 725. 0
Tennessee report ¹ by Eugene G. Wyatt, Vanderbilt University Law School-----	2, 371. 9
Virginia report by Edward A. Mearns, Jr., University of Virginia Law School-----	1, 770. 00

¹ The Memphis portion of the Tennessee report was compiled by G. W. Foster, Jr., consultant to the Civil Rights Commission. Mr. Foster was compensated for his work on a consultant's basis.

CIVIL RIGHTS COMMISSION—HOUSING IN WASHINGTON, APRIL 12, 13, 1962

The Commission reaffirmed its 1961 recommendation that the President issue an Executive order on equal housing opportunity on a nationwide basis. The President has since issued such an order. The Commission recommended the following:

"Recommendation 1.—That the Board of Commissioners of the District of Columbia issue and effectively implement an appropriate regulation prohibiting discrimination on the basis of race, color, religion, or national origin in the sale, rental, or financing of housing accommodations within the District of Columbia."

The Commission pointed to the trend of increasing nonwhite population of the city and the white movement to the suburban areas. Testimony was adduced that discrimination is still apparent in numerous areas, the effect of which is to deny adequate housing to nonwhite individuals, especially better housing. The effect is to restrict Negro families to certain areas. In the suburbs, the discrimination has taken the form of restricting nonwhites to certain areas and, as often has been the case, forcing them out of established areas by abuse of zoning and eminent domain procedures.

Some 40 witnesses testified during 2 days of hearings; and in addition 14 statements were submitted for the record. The witness list included individuals of all related areas of interest, such as persons charged with carrying out the Federal housing program, representatives of the real estate profession, attorneys and members of various professional and religious groups, representatives of civic organizations and unions and private citizens.

Concurring statement by Rankin and Storey: There is general acceptance that racial restrictions have been established by builders, real estate brokers and lending institutions, and that such practices limit the freedom of choice of citizens. However, it is hoped that the Board of Commissioners will not make this recommendation applicable to sales and rentals by individual owners of the homes they occupy—to do so would be to trespass on individual property rights. The competency of an administrative agency to determine whether the motives of a homeowner are good or bad, selfish or unselfish, etc., is subject to considerable doubt.

"Recommendation 2.—That the Board of Commissioners require the suspension or revocation of a broker's license or license to provide housing accommodations issued under the District of Columbia Code where the individual participates or engages in any act prohibited by such regulation as may be promulgated in accordance with recommendation 1."

This arises from the findings that certain procedures are and have been used by real estate salesmen and brokers which tend to discriminate. Several witnesses related that the brokers will generally refuse to show a Negro a house in an all-white area, or will flatly refuse to sell to him. Witnesses also stated that certain banking institutions would refuse a loan to an individual Negro attempting to buy into an all-white neighborhood.

In answer to these allegations, testimony was adduced at the hearings that the brokers are merely carrying out the instructions of the landowners who placed the land with them for sale, and that they were under an obligation to those clients. Additionally, it was pointed out that the code of ethics of the National Association of Real Estate Boards provides:

"The realtor should not be instrumental in introducing into a neighborhood a character of property or use which will clearly be detrimental to property values in that neighborhood."

Along this line it is generally considered to be an unethical act by a real estate broker to sell a house to an individual whose presence would destroy the value of land in that area.

Additionally, to the charges that the Negro cannot get a mortgage loan to buy into a white area, representatives of banks, mortgage companies, etc., stated that it would result in an appreciable loss of business and would undermine the value of the mortgage by eroding the value of the property. The gist of the argument was that the brokers and institutional lenders must be concerned initially with the security of the property and what they feel will insure the resale value of the property.

"Recommendation 3.—That the Board of Commissioners issue a regulation declaring racial and religious restrictions contained in instruments affecting title to real property to be void and of no effect."

In addition to the simple refusal to sell to members of a minority race, the witnesses pointed out that another mechanism for discrimination is the covenant not to sell to members of minority groups. Although such covenants are judicially unenforceable, witnesses stated that they are still in general use. The reason seems to be that many people do not know these covenants cannot be enforced, or perhaps that the individual executing such a covenant feels an obligation to keep his agreement.

Some witnesses stated that elimination of the covenants would have no real effect on the situation. Others felt that a law should be enacted prohibiting such covenants from being recorded in light of the psychological effect they seem to have.

"Recommendation 4.—That the National Capital Regional Planning Council establish a standing committee on minority housing problems to assure that the rights of the members of minority groups are protected in regional plans and to work for equal access to housing for all.

"Recommendation 5.—That Congress authorize establishment of a central relocation service for the District to serve all persons forced out of their dwellings because of highway or school construction, urban renewal, or other Government action. This service should include aid in finding decent housing, and providing for financial aid to such families.

"Recommendation 6.—That the President request the Justice Department to look into whether acts of the members of the housing and home finance industry in Washington area constitute a violation of the antitrust laws of the United States; and, if so, that the Department institute appropriate proceedings against such members."

This recommendation is based upon testimony by several witnesses at the hearings that the practices by brokers, loan institutions, etc., might be violative of the existing antitrust legislation. It was pointed out that this would perhaps necessitate a revised view of antitrust legislation—in the past the necessary "conspiracy" to bring an action within the statute involved price fixing, but it was submitted that there could also be a "conspiracy" to keep certain individuals from buying land. Perhaps the real problem here would be to secure the necessary "conscious parallelism" to show a prima facies violation of the Sherman Act, but it was suggested as a method of combating this discrimination. Again, it was stated that "there is little doubt that the discriminatory behavior of the Washington real estate community effects a restraint of trade within the meaning of the Sherman Act."

HOUSING—CIVIL RIGHTS COMMISSION (1961)

The Commission pointed to the Federal Government's intervention in the field of housing in the past 27 years. The Government has taken significant action toward the creation of low-cost housing in line with the goal articulated in the Housing Act of 1949—"a decent home and a suitable living environment for every American family." The Commission feels, however, that there has been relatively little effort by the Federal Government to insure equal housing opportunities, although many of the States have actively legislated in this field.

Of the Federal agencies concerned with mortgage credit, none has attempted to secure equal access to the benefits it administers.

The Commission feels the authority is clear—the Constitution prohibits discrimination by reason of race, color, religion, et cetera, and the Civil Rights Act of 1866 recognizes the equal right of all citizens regardless of color to purchase, rent, sell or use real property. This, the Commission feels, is sufficient authority to warrant equal housing.

The Commission notes that the present policy with respect to FHA loans and VA loans is to refuse to do business with a builder who has violated a State or city law against discrimination. Thus, if there are no local laws regarding discrimination, the Federal Government in effect acts through these agencies to further discriminatory practices.

Additionally, only one of the Federal agencies (Federal Home Loan Bank Board) has adopted a clear policy opposing discrimination. The Commission feels there is a great need for these Federal supervisory agencies to exert full authority to secure equal access to home mortgage credit.

In light of its findings, the Commission recommended that the following changes be instituted:

"Recommendation 1.—That the President issue an Executive order, stating the national objective of equal opportunity in housing and specifically directing all Federal agencies concerned with housing to shape their policies and practices to make the maximum contribution to the achievement of this goal; and that the President use his good offices to stimulate the participation of all elements of the housing and home finance industries in the achievement of the national objective of equal housing opportunity.

"Recommendation 2.—That the President (a) direct FHA and VA, on a nationwide basis, to take appropriate steps to assure that builders and developers will not discriminate on the grounds of race, color, or creed in the sale or lease of housing built with the aid of FHA mortgage insurance or VA loan guarantees; (b) direct FHA, VA, and FNMA to take appropriate steps to assure nondiscrimination by lending institutions with which these agencies have dealings; (c) direct FHA and VA, in selling or leasing reacquired housing, to take appropriate steps to assure that such Government-owned housing will be available on a nondiscriminatory basis; (d) designate open occupancy housing for FNMA special assistance.

"This recommendation also included that as to (a) such steps may include an agreement in writing containing a non-discrimination provision; as to (b), such steps may include such an agreement in writing or an "approval" of the lending institution based on nondiscriminatory criteria; and as to (c), such steps may include requirement that the broker acting as agent of FHA or VA must not discriminate."

This recommendation is similar to the action taken recently by the President in his Executive order.

"The gist of the change would be that no longer would these agencies be bound only by nondiscrimination clauses presently existing under the applicable State law, but also such nondiscrimination clauses would be placed upon their operations within their Federal framework through the 14th amendment.

"According to the recommendation, the agencies must 'take appropriate steps to assure' that the parties will not discriminate. As footnoted, the Commission states only that this action may include an agreement in writing containing a nondiscrimination clause, but make no further suggestions as to how such policy might be implemented.

"The Commission bases Federal intervention into this area on the premise that 'Mortgage financing is * * * the fountainhead of the housing industry,' and in the past the Federal Government has moved to a large degree of control over how privately owned and controlled mortgage credit institutions conduct themselves. The Commission found that often these institutions, as well as banks, were operating discriminatorily, citing as authority the hearings held at Detroit, California, Ohio Conference of 1961, and hearings on the Housing Act of 1957 before the Subcommittee on Housing of the House Banking and Currency Committee (85th Cong., 1st sess. 566 (1957)."

As to whether such policy change could be implemented, the Commission states that each of these agencies could adopt a nondiscrimination policy under their framework. E.g., the act creating the Federal Home Loan Bank System provides,

(a) The Board * * * shall have power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions of this act. (Federal Home Loan Bank Act, sec. 17, 47 Stat. 737 (1932), 12 U.S.C. sec. 1437 (1958).)

(b) No institution shall be eligible to become a member of, or a non-member borrower of, a Federal home loan bank if, in the judgment of the board, * * * the character of its management or its home-financing policy

is inconsistent with sound and economical home financing, or with the purposes of this act." (Id., sec. 4(a), 47 Stat. 726 (1932), 12 U.S.C. sec. 1424(a) 1958.)

The Commission feels that these provisions would be sufficient for the adoption of a policy of nondiscrimination in the Federal Home Loan Bank System, as would similar provisions in the other Federal agencies.

"Recommendation 3.—That the Federal Government, either by Executive or by congressional action, require all financial institutions engaged in a mortgage loan business that are supervised by a Federal agency to conduct such business on a nondiscriminatory basis, and to direct all appropriate Federal agencies to devise reasonable and effective implementing procedures."

Concurring in part, dissenting in part, Commissioner Rankin cites the danger of "wholesale Federal intervention" in this area. Exacting thought must be devoted to developing limited measures to assure nondiscrimination without infringing the right of financial institutions to pursue their economic policies free from unwarranted Federal control. Yet, he feels some measures should be devised to free mortgage credit from possible discrimination.

Dissent by Vice Chairman Storey: Storey is opposed to further intervention by the Federal Government into the affairs and policies of private financial institutions. He notes that a great number of factors motivate an institution in its decision to grant loans or not, and the first duty of such officials is to make a prudent investment. Private institutions will lend their money on a nondiscriminatory basis when it is in their best interest to do it.

"Recommendations, such as this, for increasing Federal control assume a totally powerful National Government with unending authority to intervene in all private affairs among men, and to control and adjust property relationships in accordance with the judgment of Government personnel. It is at this level that a more serious and obvious weakness arises, because political employees are seldom absolutely objective.

"Therefore, a great deal of caution is needed before succumbing to the politically tempting suggestion of resorting to Federal Government for increased control.

"Successful regulation must be limited to issues that cannot be dealt with by voluntary association and, even then, only after imperative need for more extensive Federal intervention into private affairs has been established."

The Commission pointed to the necessity for action by the President to implement this nondiscrimination provision because it would not be well coordinated among the necessary agencies unless by Executive order. For these reasons, the Commission reiterates its recommendation in its 1959 Report 538 that such action be taken by Executive order by the President.

"Recommendation 4.—That the Federal Government, either by Executive order or congressional action, take appropriate measures to require communities as a prerequisite to receiving Federal urban renewal assistance:

"(a) to assure that there is a supply of decent, safe, and sanitary housing for displacees in fact adequate to the needs of the families displaced; and

"(b) to provide sufficient relocation facilities to assure the relocation of such displacees into decent, safe, and sanitary dwellings.

"Recommendation 5.—That the President direct the Urban Renewal Administration to require that each contract entered into between local public authorities and redevelopers contain a provision assuring access to reuse housing to all applicants regardless of race, creed, or color."

These recommendations were suggested to cover those cases where the Commission felt that the procedures of condemnation and eminent domain were used to further discrimination by forcing minority groups to move because of urban renewal but later barred them from reoccupying the new developments. The Commission received testimony that this was simply moving slums from one place to another, if the old occupants are not afforded the opportunity to relocate in the new developments. The Commission found that often the reason for refusal to rent to the old tenants is based on discrimination.

The Commission states the Federal Government should retain a larger control over funds. Indeed, "It is the HHFA, however, that possesses and should wield the ultimate power to assure adequate relocation results—the power to withhold certification or recertification. There is evidence that in the past HHFA has not been vigorous in holding local communities to proper relocation practices." (Hearings 1961, p. 92.)

"Recommendation 6.—That Congress amend the Highway Act of 1956 to require that in the administration of the interstate highway program, States

assure decent, safe, and sanitary housing to persons displaced by highway clearance; that in those localities where there are agencies administering relocation programs, such agencies be made responsible for the relocation of persons displaced by highway construction; and that Congress provide also for financial aid to displaced families in order to facilitate their movement to new homes.

"Recommendation 7.—That the President direct all Federal agencies concerned with housing and with home mortgage credit to develop procedures for obtaining information on the availability of home mortgage credit to nonwhites and other minority groups, and the extent to which they participate in the benefits of the housing programs administered by these agencies."

COMPARISON OF FUNCTION OF THE CIVIL RIGHTS COMMISSION WITH RELEVANT FUNCTION OF CIVIL RIGHTS DIVISION

I. FUNCTIONS OF COMMISSION

(1) Investigate allegations that citizens are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin.

(2) Study and collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution.

(3) Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

(4) Conduct such public and executive session hearings throughout the United States as may be necessary to perform the duties and accomplish the objectives of the Civil Rights Act of 1957.

(5) Prepare and submit interim reports to the President and the Congress, and a final, comprehensive report of its activities, findings, and recommendations by September 9, 1959.

II. CIVIL RIGHTS DIVISION

The following statements appeared in the appropriation request justification for the Civil Rights Division:

For fiscal 1959:

"In addition to the enforcement of the civil rights statutes it will take on a program of liaison and consultation with law-enforcement agencies and other officials of the States in order to promote understanding of the problems and to place the State and Federal responsibilities in their proper perspective."

Commenting on this Mr. W. W. White stated:

"We have in mind the great importance of the collection of far greater information—both factually and legally, in the whole civil rights area * * *. We think that without such activity we just cannot do the job."

In January 1962, testifying for appropriations for 1963, Attorney General Kennedy stated:

"In the field of civil rights the Department's basic policy is to seek effective guarantees and action from local officials and civic leaders, voluntarily and without court action where investigation has disclosed evidence of civil rights violations."

Comparison of budgets of Civil Rights Division, Department of Justice, with Commission on Civil Rights

	Civil Rights Commission	Civil Rights Division
Fiscal 1958.....	\$200,000 from President's Emergency Fund.	\$148,000
Fiscal 1959.....	\$777,000.....	(¹)
Fiscal 1960.....	\$850,000, Public Law 86-678.....	517,000
Fiscal 1961.....	\$888,000, Public Law 87-264.....	689,000
Fiscal 1962.....	\$950,000, Public Law 87-843.....	768,000

¹ Still part of Criminal Division.

² \$487,850 and \$40,130 (pay increase).

**ACTIVITIES OF CIVIL RIGHTS DIVISION OF JUSTICE DEPARTMENT ACCORDING TO
THE ANNUAL REPORT OF ATTORNEY GENERAL, 1962**

I. VOTING RIGHTS

During 1962 a total of 3,093 complaints were received which merited investigation and hearings; 32 cases were filed as a result of these complaints; 3 had been adjudicated at the time of the report.

Sixty-two counties were still under investigation at the time of the report, and it was estimated that 35 more cases would be filed before the end of the year.

After suits have been successfully adjudicated, the Division continues surveillance of the counties involved to assure compliance with court orders. This surveillance has led to two contempt citations during fiscal 1962. Trial dates were set for 5 more cases in the fall of 1962, and it was estimated that 16 additional contempt cases would be tried before the end of fiscal 1963.

II. INTERSTATE TRANSPORT

Two hundred and ninety-nine bus stations were investigated by the FBI. Out of 33 stations practicing segregation, 14 complied voluntarily with the Division's request for desegregation; 9 suits were brought which resulted in 7 court orders of complete relief; 10 stations were still being considered when the report was made.

Sixty-eight railroad stations voluntarily complied with the Division's requests.

Of 165 airports, all except 4 complied voluntarily. These four airports were desegregated following suits.

U.S. COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C.

Recapitulation of complaints received during the period July 1, 1962, through May 17, 1963 (pursuant to Public Law 85-315, sec. 104 (a) (1) (2) (3))

Sworn voting complaints.....	31
Unsworn voting complaints.....	63
General voting irregularity complaints.....	7
Total voting complaints received.....	101
Complaints other than voting.....	424
Administration of justice.....	145
Education.....	16
Employment.....	53
Housing.....	15
Transportation, and public accommodations.....	15
Information—Miscellaneous.....	54
Anonymous, crank or illegible.....	20
Federal administration.....	83
Spanish-speaking project.....	2
No Commission jurisdiction.....	21
Grand total of all complaints received.....	525

Voting complaints filed pursuant to Public Law 85-315, sec. 104(a) (1), listed by State and category—Period covered: From the organization of the Commission through May 17, 1963

State	Sworn ¹	Unsworn ²	General Irregularities ³	Total
Alabama.....	175	32	7	214
Alaska.....	0	0	0	0
Arizona.....	0	0	0	0
Arkansas.....	1	1	5	7
California.....	0	14	40	54
Colorado.....	0	0	0	0
Connecticut.....	0	0	0	0
Delaware.....	0	0	0	0
Florida.....	9	2	7	18
Georgia.....	0	2	1	3
Hawaii.....	0	0	0	0
Idaho.....	0	0	0	0
Illinois.....	0	0	2	2
Indiana.....	0	0	1	1
Iowa.....	0	0	0	0
Kansas.....	0	0	1	1
Kentucky.....	0	1	1	2
Louisiana.....	114	45	37	196
Maine.....	0	0	0	0
Massachusetts.....	1	0	0	1
Maryland.....	0	0	0	0
Michigan.....	0	0	2	2
Minnesota.....	0	0	0	0
Mississippi ⁴	72	78	8	158
Missouri.....	0	0	0	0
Montana.....	0	0	0	0
Nebraska.....	0	0	1	1
Nevada.....	0	0	0	0
New Hampshire.....	0	0	0	0
New Jersey.....	1	1	1	3
New Mexico.....	0	0	0	0
New York.....	3	0	2	5
North Carolina.....	40	0	0	40
North Dakota.....	0	0	0	0
Ohio.....	0	0	0	0
Oklahoma.....	1	0	3	4
Oregon.....	0	0	0	0
Pennsylvania.....	0	0	2	2
Rhode Island.....	0	0	0	0
South Carolina.....	0	0	3	3
South Dakota.....	0	0	0	0
Tennessee.....	7	1	8	16
Texas.....	0	0	1	1
Utah.....	0	0	0	0
Vermont.....	0	0	0	0
Virginia.....	0	0	4	4
Washington.....	0	0	0	0
West Virginia.....	0	0	1	1
Wisconsin.....	0	0	1	1
Wyoming.....	0	0	0	0
District of Columbia.....	0	0	0	0
Puerto Rico.....	0	0	0	0
Total by category.....	424	177	139	740
Grand total of all complaints received.....				740

¹ Sworn voting complaints are those in writing and under oath or affirmation alleging unlawful denial of the right to vote and have that vote counted.

² Unsworn voting complaints are those in writing but not under oath or affirmation alleging unlawful denial of the right to vote and have that vote counted.

³ General voting irregularities complaints are either sworn or unsworn complaints alleging that unlawful restraint or hardship was placed upon the complainant, or that the complainant was subjected to some unlawful discrimination in the exercise of his suffrage rights.

⁴ 31 voting complaints received from Mississippi since Mar. 15 of this year: 3 sworn, 28 unsworn.

Complaints filed pursuant to Public Law 85-515, sec. 104(a)(2)(3) (no statutory requirement to be under oath) listed by State and category—
Period covered; From the organization of the Commission through May 17, 1963

State	Category										Total
	Adminis- tration of justice	Educa- tion	Employ- ment	Housing	Transporta- tion and public accommo- dations	Informa- tional— miscella- neous	Anony- mous, crank or illegible	Federal adminis- tration	Spanish- speaking project	No Com- mission jurisdic- tion	
Alabama.....	64	6	16	29	10	15	10	1	0	0	151
Alaska.....	1	0	2	0	0	0	0	0	0	0	3
Arizona.....	1	0	2	0	0	2	0	0	0	0	5
Arkansas.....	7	4	3	0	1	7	1	4	0	0	27
California.....	62	0	27	1	1	31	18	4	2	2	148
Colorado.....	2	0	2	0	0	3	0	0	0	0	7
Connecticut.....	8	0	4	0	0	3	1	0	0	0	16
Delaware.....	3	0	0	0	0	1	0	0	0	0	4
Florida.....	54	2	10	2	2	23	15	1	0	1	115
Georgia.....	28	7	8	2	4	8	5	5	0	0	67
Hawaii.....	0	1	0	0	0	1	0	0	0	0	2
Idaho.....	1	0	0	0	0	0	1	0	0	0	2
Illinois.....	32	0	9	3	1	23	14	1	0	1	84
Indiana.....	14	0	6	1	1	10	2	0	0	1	35
Iowa.....	11	0	3	1	1	4	0	0	0	0	28
Kansas.....	8	0	1	0	0	4	0	0	0	0	13
Kentucky.....	8	2	1	0	2	3	4	0	0	0	23
Louisiana.....	49	2	10	3	5	12	10	1	0	1	92
Maine.....	1	0	0	0	0	1	0	0	0	0	2
Maryland.....	12	0	5	7	1	5	2	2	0	0	24
Massachusetts.....	9	1	2	2	0	5	3	0	0	1	23
Michigan.....	17	0	19	4	2	15	9	2	0	0	68
Minnesota.....	1	0	0	0	0	4	1	1	0	0	7
Mississippi.....	73	14	3	0	7	11	2	32	0	0	142
Missouri.....	25	1	10	1	2	11	10	2	0	1	63
Montana.....	5	0	0	0	0	2	0	0	0	0	7
Nebraska.....	3	0	0	3	0	1	0	2	0	0	9
Nevada.....	3	0	2	0	1	1	0	2	0	0	9
New Hampshire.....	1	0	1	0	0	0	0	0	0	0	2
New Jersey.....	20	1	14	8	0	9	4	3	0	1	50
New Mexico.....	2	0	0	1	0	3	0	0	0	1	7
New York.....	69	5	27	11	5	22	27	6	1	5	178
North Carolina.....	21	5	8	0	3	15	3	4	0	0	59
North Dakota.....	4	0	0	0	0	0	0	0	0	2	6
Ohio.....	39	0	11	3	1	12	10	2	0	0	78
Oklahoma.....	7	0	4	1	2	2	0	0	0	0	16

Oregon.....	3	0	0	0	0	1	0	0	0	0	4
Pennsylvania.....	30	1	14	3	2	17	16	1	0	0	84
Rhode Island.....	0	0	0	0	1	0	0	0	0	0	1
South Carolina.....	33	1	11	0	1	11	3	2	0	0	62
South Dakota.....	10	0	1	0	0	0	0	0	0	0	11
Tennessee.....	21	3	8	2	0	18	5	2	0	1	60
Texas.....	29	2	8	1	3	16	18	0	0	1	78
Utah.....	1	0	1	0	0	1	2	0	0	0	5
Vermont.....	0	0	0	0	0	0	0	0	0	0	0
Virginia.....	23	6	14	7	1	2	1	2	0	4	60
Washington.....	12	0	2	0	0	6	0	1	0	1	22
West Virginia.....	8	0	3	0	0	1	0	0	0	1	13
Wisconsin.....	7	0	4	1	0	5	3	0	0	0	20
Wyoming.....	3	0	0	2	0	1	0	0	0	0	6
District of Columbia.....	46	2	37	0	3	21	10	3	0	0	121
Puerto Rico.....	2	0	2	0	0	1	1	0	0	0	6
Foreign countries.....	3	0	0	0	0	3	0	2	1	0	9
Postmark illegible.....	0	0	0	0	0	0	17	0	0	0	17
Totals by category.....	895	66	315	99	63	373	228	88	4	25	2,156
Grand total of all complaints, other than voting.....											2,156

BRIEF OF MORGAN V. UNITED STATES (304 U.S. 1)

Appellants, market agents, challenged the validity of an order of the Secretary of Agriculture fixing maximum rates to be charged by them at the Kansas City Stockyards pursuant to the Packers and Stockyards Act, 1921, 42 Stat. 159; 7 U.S.C. 181-229.

The appellants claim that the Secretary did not accord them a hearing which the statute requires as a prerequisite to a valid order. The Supreme Court sustained this contention.

The procedure followed by the Department of Agriculture was the following:

Testimony was taken from both sides by an examiner of the Department. Oral argument was heard by the Secretary. A brief was submitted by the appellants, but none was submitted by the Government. Findings were prepared by the Department. The Secretary based his decision on these findings, *ex parte* conversations with Department officials and sketchy review of the record.

The Court held that in a quasi-judicial hearing, which this was, since the outcome affected appellants' property rights, a hearing which did not afford appellants the opportunity to contest the findings of the Government did not meet the requirements of law in that they were not "in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

GREENE V. McELROY (300 U.S. 474)

Petitioner, an aeronautical engineer with a private firm, lost his job after the Navy revoked his security clearance. The hearing procedures afforded petitioner did not accord him the rights of confrontation and cross-examination.

The Court held that since the clearance procedure is of questionable constitutionality, it could not be adopted without explicit congressional authorization. The Court found that there was no such authorization. The Court considered the procedures to be of questionable constitutionality in that a person would be deprived of the right to follow his chosen occupation without a full hearing.

WILLNER V. COMMITTEE ON CHARACTER AND FITNESS, ETC.

May 13, 1963

Facts

Petitioner passed the New York bar examinations in 1936 and since that time, intermittently has been seeking admission to the bar. In 1938 the character and fitness committee, after several hearings, refused to certify to the Appellate Division of the New York Court of Appeals that Willner possessed the requisite character for membership in the bar. In 1943 the appellate division refused to review its 1938 opinion. Permission of the appellate division is necessary before one can reapply for admission, once admission has been denied. In 1948, the appellate division granted Willner permission to reapply and after two hearings, the character committee again refused to certify him. In 1951, Willner again applied to the appellate division which denied his application. A similar application was denied in 1954; the court of appeals refused leave to appeal, and the Supreme Court denied certiorari.

The appellate division denied Willner's final application to reapply in 1960 and the Court of Appeals granted leave to appeal and then affirmed the action of the appellate division holding that Willner had not been denied due process of law (11 New York 2d 860). Willner had contended that he "was never afforded the opportunity of confronting my accusers, of having the accusers sworn and cross-examined them, and the opportunity of refuting the accusations and the accusers."

Holding

The Supreme Court, per Justice Douglas, reversed the court of appeals. He stated: "We have emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood." The Court stated that Willner was denied due process of law in that he was not allowed to confront and cross-examine the adverse witnesses whose testimony was relied on by the character committee. The Court noted that the "role of the committee is more than that of a mere investigator." Goldberg concurring (Justice Brennan and Justice Stewart).

Justice Goldberg interprets the majority opinion and the demands of due process as requiring confrontation and cross-examination somewhere in the total proceedings, but not necessarily before the character committee.

Harlan dissenting (Justice Clark).

The writ of certiorari should have been dismissed as improvidently granted.

BRIEF OF HANNAH v. LARCHE (363 U.S. 420 (1960))

Facts

The Comm'ssion on Civil Rights adopted rules of procedure which provided that the identity of complainants need not be disclosed and that witnesses summoned to appear before the Commission could not cross-examine other witnesses called by the Commission who accused them of illegal acts. These rules were challenged by registrars and private citizens of Louisiana in connection with hearings on voting rights which the Commission intended to hold in Shreveport. These persons, who had been subpoenaed to appear, petitioned the U.S. District Court for the Western District of Louisiana to enjoin the hearings on the basis that these rules were unconstitutional because they denied witnesses the right to cross-examination and confrontation in violation of the fifth amendment.

The district court enjoined the hearings on the theory that there was no congressional authorization for adoption of the challenged rules (following *Greene v. McElroy*) and therefore the Commission was without power to adopt them (*Larche v. Hannah*, 177 F. Supp. 816).

Holding

The Supreme Court (Chief Justice Warren) reversed the district court, holding that the Commission had the power to promulgate the rules in question; and that those rules were constitutional as the Commission exercises an investigatory, not an adjudicatory function.

Argument

1. It is clear that Congress authorized the Commission to promulgate such rules because—

(a) the legislation establishing the Commission specifically mentions certain safeguards which must be given to witnesses. Confrontation and cross-examination are not included (42 U.S.C. 1975(a)).

(b) a bill embodying these rights was defeated by the Congress at the time of passage of the Civil Rights Act of 1957.

2. The requirements of due process vary with the type of proceeding involved. Historically, investigatory hearings are not surrounded by the rights of confrontation and cross-examination. This is true in legislative, executive, and administrative hearings.

The fact that witnesses might be exposed to "public opprobrium and scorn, the distinct likelihood of losing their jobs, and the possibility of criminal prosecutions," does not entitle the witnesses to the rights sought as "they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission's investigative function."

3. The opinion goes on to outline other agencies which deny these rights in investigatory proceedings. Among them are the FTC and SEC. An appendix details procedures of various agencies.

OPINION OF JUSTICE FRANKFURTER

(Concurring)

Balancing the needs of Government against the need of protecting the individual, the Commission's rules provide sufficient safeguards such that their rules of procedure do not offend due process. See *In re Groban* (352 U.S. 330) and *Anonymous v. Baker* (360 U.S. 287).

JUSTICE HARLAN AND JUSTICE CLARK

(Concurring)

In re Groban and *Anonymous v. Baker* are dispositive of the issues presented.

JUSTICE DOUGLAS AND JUSTICE BLACK

(Dissenting)

Denial of the rights of confrontation and cross-examination in this case is a violation of due process of law. The complaints filed before the Commission charge the registrar witnesses with denying them the right to vote. If true, this would constitute a Federal criminal violation. The witnesses are thus put in the position of being required to testify, without being able to confront their accusers, to something which might result in a criminal prosecution being brought against them.

APPENDIX TO OPINION

[Footnotes at end of table]

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
<p><i>Executive and Administrative Agencies:</i> Atomic Energy Commission.</p>	<p>The Commission is authorized to "make such studies and investigations, . . . and hold such meetings or hearings as . . . [it] may deem necessary or proper to assist it in exercising" any of its statutory functions. 68 Stat. 948, 42 U.S.C. § 2201 (c).</p>	<p>The Commission may subpoena any person to appear and testify or produce documents "at any designated place." 68 Stat. 948, 42 U.S.C. § 2201 (c).</p>

OF THE COURT¹

[Footnotes at end of table]

The type of notice required to be given in investigative proceedings ²	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ³	Miscellaneous comments
<p>This is not specified by statute. The Commission's Rules of Practice provide that "[t]he procedure to be followed in informal hearings shall be such as will best serve the purpose of the hearing." 10 CFR § 2.720. The Rules of Practice do not require any specific type of notice to be given in informal hearings. <i>Ibid.</i></p>	<p>This is not specified by statute. The Commission's Rules of Practice do not require that those summoned to appear before informal hearings be given the right to cross-examine other witnesses. Rather, the Commission is given the discretion to adopt those procedures which "will best serve the purpose of the hearing." 10 CFR § 2.720.</p>	<p>The Commission's Rules of Practice draw a sharp distinction between informal and formal hearings. Formal hearings are used only in "cases of adjudication," 10 CFR § 2.708, and parties to the hearings are given detailed notice of the subject of the hearing, <i>id.</i>, § 2.735, as well as the right to cross-examine witnesses, <i>id.</i>, § 2.747. Informal hearings are used in investigations "for the purposes of obtaining necessary or useful information, and affording participation by interested persons, in the formulation, amendment, or rescission of rules and regulations." <i>Id.</i>, § 2.708. The safeguards which are accorded in the formal, adjudicative hearings are not mentioned in the Commission's Rule relating to informal hearings. <i>Id.</i>, § 2.720.</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Federal Communications Commission.	<p>(1) The Commission is authorized to investigate any matters contained in a complaint "in such manner and by such means as it shall deem proper." 48 Stat. 1073, 47 U. S. C. § 208.</p> <p>(2) The Federal Communications Commission was also authorized to conduct a special investigation of the American Telephone and Telegraph Company, and to obtain information concerning the company's history and structure, the services rendered by it, its failure to reduce rates, the effect of monopolistic control on the company, the methods of competition engaged in by the company, and the company's attempts to influence public opinion by the use of propaganda. 49 Stat. 43.</p>	<p>(1) The Commission may "subpoena the attendance and testimony of witnesses and the production of all books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation." 48 Stat. 1090, 47 U. S. C. § 409 (e).</p> <p>(2) The Commission was also given the subpoena power by the statute authorizing the investigation of the American Telephone and Telegraph Company. 49 Stat. 45.</p>
Federal Trade Commission.	<p>(1) The Commission is authorized to investigate "the organization, business, conduct, practices, and management of any corporation engaged in commerce"; to make an investigation of the manner in which antitrust decrees are being carried out; to investigate and report the facts relating to any alleged violations of the anti-</p>	<p>(1) The Commission may "subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation." 38</p>

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ¹	Miscellaneous comments
<p>This is not specified by statute. The Commission's Rules of Practice do not specify the type of notice to be given in investigative proceedings. However, the Rules do provide that the "(p)rocedures to be followed by the Commission shall, unless specifically prescribed . . . [in the Rules], be such as in the opinion of the Commission will best serve the purposes of . . . [any investigative] proceeding." 47 CFR § 1.10.</p>	<p>This is not specified by statute. Nor do the Commission's Rules of Practice refer to cross-examination in investigative proceedings. Therefore, whether persons appearing at an investigation have the privilege of cross-examining witnesses apparently depends upon whether the Commission is of the opinion that cross-examination "will best serve the purposes of such proceeding." 47 CFR § 1.10. It should also be noted that even in that portion of the Commission's Rules relating to adjudicative proceedings, there is no specific provision relating to cross-examination. <i>Id.</i>, §§ 1.101-1.193.</p>	<p>It should be noted that the Commission's Report on the Telephone Investigation made no mention of the type of notice, if any, given to those summoned to appear at the investigation. Nor was there any reference to cross-examination. The Commission did permit the Company "to submit statements in writing pointing out any inaccuracies in factual data or statistics in the reports introduced in the hearings or in any testimony in connection therewith, provided that such statements were confined to the presentation of facts and that no attempt would be made therein to draw conclusions therefrom." H. R. Doc. No. 340, 76th Cong., 1st Sess. xviii.</p>
<p>(1) This is not specified by statute. The Commission's Rules of Practice provide that "[a]ny party under investigation compelled to furnish information or documentary evidence shall be advised with respect to</p>	<p>(1) This is not specified by statute. The Commission's Rules of Practice provide that a person required to testify in an investigative proceeding "may be accompanied and advised by counsel, but</p>	<p>(1) It is interesting to note that the Commission's Rules of Practice draw an express and sharp distinction between investigative and adjudicative proceedings, and that the Commission's Rules relating to notice and</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
<p>Federal Trade Commission—Continued.</p>	<p>trust Acts by any corporation; and "to investigate . . . trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States." 38 Stat. 721-722, 15 U.S.C. § 46.</p> <p>(2) The Commission was also authorized to conduct a special investigation of the motor vehicle industry to determine</p> <p>(a) "the extent of concentration of control and of monopoly in the manufacturing, warehousing, distribution, and sale of automobiles, accessories, and parts, including methods and devices used by manufacturers for obtaining and maintaining their control or monopoly . . . and the extent, if any, to which fraudulent, dishonest, unfair, and injurious methods . . . [were] employed, including combinations, monopolies, price fixing, or unfair trade practices"; and (b) "the extent to which any of the antitrust laws of the United States . . . [were] being violated." 52 Stat. 218.</p>	<p>Stat. 722, 15 U.S.C. § 49.</p> <p>(2) The Commission was also given the subpoena power under the statute authorizing the investigation of the motor vehicle industry. 52 Stat. 218.</p>

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ¹	Miscellaneous comments
<p>the purpose and scope of the investigation." 16 CFR, 1959 Supp., § 1.33.</p> <p>(2) The Commission's Report on the Motor Vehicle Industry did not indicate what type of notice, if any, was given to those summoned to testify at the investigation. H.R. Doc. No. 468, 76th Cong., 1st Sess. Presumably, the Commission's regular Rules of Practice obtained.</p>	<p>counsel may not, as a matter of right, otherwise participate in the investigation." 16 CFR, 1959 Supp., § 1.40. Moreover, while the Rules of Practice make no mention of the right to cross-examine witnesses in investigative proceedings, see <i>id.</i>, § 1.31-1.42, such a right is specifically given to parties in an adjudicative proceeding. <i>Id.</i>, § 3.16.</p> <p>(2) The Commission's Report on the Motor Vehicle Industry did not refer to cross-examination. H.R. Doc. No. 468, 76th Cong., 1st Sess. Presumably, the Commission's regular Rules of Practice obtained.</p>	<p>cross-examination in investigative proceedings are very similar to those adopted by the Civil Rights Commission.</p> <p>(2) It should also be observed that FTC investigations may be initiated "upon complaint by members of the consuming public, businessmen, or the concerns aggrieved by unfair practices," 16 CFR, 1959 Supp., § 1.11, and that complaints received by the Commission may charge "any violation of law over which the Commission has jurisdiction." <i>Id.</i>, § 1.12.</p> <p>(3) Also relevant to our inquiry is the fact that the Commission does not "publish or divulge the name of an applicant or complaining party." <i>Id.</i>, § 1.15.</p> <p>(4) Finally, it is important to observe that the FTC, unlike the Civil Rights Commission, has the authority to commence adjudicative proceedings based upon the material obtained by means of investigative proceedings. <i>Id.</i>, § 1.42.</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
National Labor Relations Board.	Under the National Labor Relations Act, the Board is given the power to investigate petitions and charges submitted to it relating to union representation and unfair labor practices. 61 Stat. 144, 149, 29 U.S.C. §§ 159 (c), 160 (l).	"For the purpose of all hearings and investigations . . . the Board [may] . . . copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation," and it may also issue subpoenas requiring the attendance and testimony of witnesses in any proceeding or investigation. 61 Stat. 150, 29 U. S. C. § 161.
Securities and Exchange Commission.	<p>(1) Under the Securities Act of 1933, as amended, the Commission is authorized to conduct "all investigations which . . . are necessary and proper for the enforcement of" the Act. 48 Stat. 85, 15 U. S. C. § 77s (b).</p> <p>(2) The Securities Exchange Act of 1934 authorizes the Commission to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provisions of . . . [the Act] or any rule or regulation thereunder." 48 Stat. 899, 15 U. S. C. § 78u (a).</p> <p>(3) The Public Utility Holding Company Act of 1935 empowers the Commission to "investigate any facts, condi-</p>	All of the Acts which authorize the Commission to conduct investigations also bestow upon it the power to subpoena witnesses, compel their attendance, and require the production of any books, correspondence, memoranda, contracts, agreements, and other records which are relevant to the investigation. Securities Act of 1933, 48 Stat. 85, 15 U. S. C. § 77s (b); Securi-

The type of notice required to be given in investigative proceedings ²	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ¹	Miscellaneous comments
<p>This is not specified by statute. The Board's Statements of Procedure and Rules and Regulations provide for the preliminary investigation of all petitions and charges received by the Board. Although a copy of the initial charge may be served upon an alleged violator, there is no specific rule requiring the Board to give notice of the preliminary investigation. See 29 CFR, 1960 Supp., §§101.4, 101.18, 101.22, 101.27, 101.32, 102.63, 102.77, 102.85.</p>	<p>This is not specified by statute. The Board's Statements of Procedure and Rules and Regulations provide for the right to cross-examine witnesses at formal, adjudicative hearings, 29 CFR, 1960 Supp., §§101.10, 102.38, 102.66, 102.86, 102.90, but there is no such provision with regard to preliminary investigations. <i>Id.</i>, §§101.4, 101.18, 101.22, 101.27, 101.32, 102.63, 102.77, 102.85.</p>	<p>It should be noted that the National Labor Relations Board may use the information collected during preliminary investigations to initiate adjudicative proceedings. 61 Stat. 149, 29 U. S. C. § 160 (l). The Commission on Civil Rights has no such power. Moreover, the Board, unlike the Civil Rights Commission, may use the information obtained by it through investigations to petition the federal courts for appropriate injunctive relief, 61 Stat. 149, 29 U. S. C. § 160 (l).</p>
<p>This is not specified by statute. Nor do the Commission's Rules of Practice relating to formal investigations make any mention of the type of notice which must be given in such proceedings. 17 CFR § 202.4. The Commission's Rules do provide for the giving of notice in adjudicative proceedings, <i>id.</i>, 1959 Supp., § 201.3, but this provision is made specifically inapplicable to investigative proceedings. <i>Id.</i>, § 201.20.</p>	<p>This is not specified by statute. The Commission's Rules of Practice make no mention of the right to cross-examine witnesses in investigative proceedings. 17 CFR § 202.4. Parties are given the right to cross-examine witnesses in adjudicative proceedings, <i>id.</i>, § 201.5, but this provision is made specifically inapplicable to investigative proceedings. <i>Id.</i>, § 201.20.</p>	<p>The Securities and Exchange Commission's procedures for investigative proceedings are very similar to those of the Civil Rights Commission. Investigations may be initiated upon complaints received from members of the public, and these complaints may contain specific charges of illegal conduct. 17 CFR § 202.4. It should be noted, however, that the Securities and Exchange Commission, unlike the Civil</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Securities and Exchange Commission—Con.	<p>tions, practices, or matters which it may deem necessary or appropriate to determine whether any person has violated or is about to violate any provision of . . . [the Act] or any rule or regulation thereunder, or to aid in the enforcement of the provisions of . . . [the Act], in the prescribing of rules and regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which . . . [the Act] relates." 49 Stat. 831, 15 U. S. C. § 79r (a).</p> <p>(4) The Trust Indenture Act of 1939 authorizes the Commission to conduct "any investigation . . . which . . . is necessary and proper for the enforcement of" the Act. 53 Stat. 1174, 15 U. S. C. § 77uuu (a).</p> <p>(5) The Investment Company Act of 1940 gives the Commission the power to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of . . . [the Act] or of any rule, regulation, or order thereunder, or to determine whether any action in any court or any proceeding before the Commission shall be instituted under . . . [the Act] against a particular person or persons, or with respect to a particular person or persons, or with respect to a particular transaction or transactions." 54 Stat. 842, 15 U. S. C. § 80a-41(a).</p> <p>(6) Finally, under the Investment Advisers Act of 1940, the Commission is authorized to determine by investigation</p>	<p>ties Exchange Act of 1934, 48 Stat. 900, 15 U. S. C. § 78u (b); Public Utility Holding Company Act of 1935, 49 Stat. 831, 15 U. S. C. § 79r (c); Trust Indenture Act of 1939, 53 Stat. 1174, 15 U. S. C. § 77uuu (a); Investment Company Act of 1940, 54 Stat. 842, 15 U. S. C. § 80a-41 (b); Investment Advisers Act of 1940, 54 Stat. 853, 15 U. S. C. § 80b-9 (b).</p>

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ¹	Miscellaneous comments
		<p>Rights Commission, is an adjudicatory body, and it may use the information gathered through investigative proceedings to initiate "administrative proceedings looking to the imposition of remedial sanctions, . . . (or) injunction proceedings in the courts, and, in the case of a willful violation," it may refer the "matter to the Department of Justice for criminal prosecution." <i>Ibid.</i> See also Securities Act of 1933, 48 Stat. 86, 15 U. S. C. § 77t (b); Securities Exchange Act of 1934, 48 Stat. 900, 15 U. S. C. § 78u (e); Public Utility Holding Company Act of 1935, 49 Stat. 832, 15 U. S. C. § 79r (f); Investment Company Act of 1940, 54 Stat. 843, 15 U. S. C. § 80a-41 (e); Investment Advisers Act of 1940, 54 Stat. 854, 15 U. S. C. § 80b-9 (e).</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Securities and Exchange Commission—Con.	whether "the provisions of . . . [the Act] or of any rule or regulation prescribed under the authority thereof, have been or are about to be violated by any person." 54 Stat. 853, 15 U. S. C. § 80b-9 (a).	
Office of Price Stabilization. ¹	The Defense Production Act of 1950 authorized the President "to issue regulations and orders establishing a ceiling or ceilings on the price, rental, commission, margin, rate, fee, charge, or allowance paid or received on the sale or delivery, or the purchase or receipt, by or to any person, of any material or service, and at the same time . . . issue regulations and orders stabilizing wages, salaries, and other compensation in accordance with provisions of" the Act. 64 Stat. 803. This authority was delegated to the Economic Stabilization Administrator by Exec. Order No. 10161, 15 Fed. Reg. 6105. The Administrator in turn delegated the duty of issuing price regulations to the Office of Price Stabilization. Gen. Order No. 2 of the Economic Stabilization Agency, 16 Fed. Reg. 738. Pursuant to this authority, the Office of Price Stabilization promulgated Rules of Procedure, Section 2 of which provided that investigations would be held before the issuance of a ceiling price regulation. Price Procedural Regulation 1, Revision 2—General Price Procedures, § 2, 17 Fed. Reg. 3788.	The Defense Production Act of 1950 conferred upon the President the power, "by subpoena or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of . . . [the] Act and the regulations or orders issued thereunder." 64 Stat. 816. This power was delegated to the Office of Price Stabilization by Exec. Order No. 10161, 15 Fed. Reg. 6105; Gen. Order No. 2 of the Economic Stabilization Agency, 16 Fed. Reg. 738.

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ¹	Miscellaneous comments
<p>This was not specified by statute or Executive Order. The Office's Rules of Procedure provided that a general public notice was to be given in the Federal Register of all pre-issuance hearings. Price Procedural Regulation 1—General Price Procedures, § 4, 17 Fed. Reg. 3788.</p>	<p>This was not specified by statute or Executive Order. Nor did the Office's Rules of Procedure make any mention of the right to cross-examine witnesses appearing at pre-issuance hearings. The Rules merely said that the hearing was to "be conducted in such manner, consistent with the need for expeditious action, as will permit the fullest possible presentation of the evidence by such persons as are, in the judgment of the Director, best qualified to provide information with respect to matters considered at the hearing or most likely to be seriously affected by action which may be taken as a result of the hearing." Price Procedural Regulation 1—General Price Procedures, § 5, 17 Fed. Reg. 3788.</p>	<p>It should be noticed that the Office's pre-issuance hearings usually led to determinations which had severe effects upon certain individuals; yet, there was no provision for personalized, detailed notice or cross-examination.</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Office of Price Administration. ⁶	The Administrator was "authorized to make such studies and investigations and to obtain such information as he . . . [deemed] necessary or proper to assist him in prescribing any regulation or order under . . . [the] Act, or in the administration and enforcement of . . . [the] Act and regulations, orders, and price schedules thereunder." 56 Stat. 30.	"For the purpose of obtaining any information [in an investigation] . . . the Administrator . . . [could] by subpoena require any . . . person to appear and testify or to appear and produce documents, or both, at any designated place." 56 Stat. 30.
The Department of Agriculture.	(1) Under the Perishable Agricultural Commodities Act of 1930, the Department is authorized to investigate any complaint filed with the Secretary alleging that someone has violated the Act. 46 Stat. 534, 7 U. S. C. § 499f(c). (2) The Department also enforces the Packers and Stock-	(1) The Perishable Agricultural Commodities Act of 1930 authorizes the Secretary to "require by subpoena the attendance and testimony of witnesses and the produc-

The type of notice required to be given in investigative proceedings ³	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ⁴	Miscellaneous comments
<p>This was not specified by statute. The Administrator's Rules of Procedure did not specify the type of notice, if any, to be given during the investigative stage of price regulation proceedings. 32 CFR, 1944 Supp., § 1300.2. After the investigation, the Administrator could hold a price hearing prior to issuance of the regulation, and general notice of the hearing was to be published in the Federal Register. <i>Id.</i>, § 1300.4.</p>	<p>This was not specified by statute. The Administrator's Rules of Procedure made no mention of the right to cross-examine witnesses during either investigations or pre-issuance hearings. 32 CFR, 1944 Supp., §§ 1300.2, 1300.5. The Rules merely provided that hearings were to be conducted "in such manner, consistent with the need for expeditious action, as will permit the fullest possible presentation of evidence by such persons as are, in the judgment of the Administrator, best qualified to provide information with respect to matters considered at the hearing or most likely to be seriously affected by action which may be taken as a result of the hearing." <i>Id.</i>, § 1300.5.</p>	<p>It should be noted that even though the Administrator's proceedings smacked of an adjudication, there was no express requirement that either detailed notice or the right to cross-examine witnesses be given to parties affected by the Administrator's actions.</p>
<p>This is not specified by statute. The Department's Rules of Practice adopted pursuant to the Perishable Agricultural Commodities Act and the Packers and Stockyards Act do not refer to the type</p>	<p>This is not specified by statute. The Department's Rules of Practice adopted pursuant to the Perishable Agricultural Commodities Act and the Packers and Stockyards Act contain no reference to</p>	<p>(1) The Department of Agriculture, unlike the Civil Rights Commission, may use the information obtained through investigations in its subsequent adjudicative proceedings under the Perishable Agricultural</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
The Department of Agriculture—Con.	yards Act of 1921, which, for the purposes of that Act, gives the Secretary the investigative and other enforcement powers possessed by the Federal Trade Commission, 42 Stat 168, 7 U. S. C. § 222. The Department's Rules of Practice also provide that investigations shall be conducted when informal complaints charging a violation of the Act are received by the Secretary. 9 CFR § 202.23.	tion of such accounts, records, and memoranda as may be material for the determination of any complaint under" the Act. 46 Stat. 536, 7 U. S. C. § 499m (b). (2) The Packers and Stockyards Act of 1921 gives to the Secretary those powers conferred upon the Federal Trade Commission by "sections 46 and 48-50 of Title 15." Among those powers is the authority to subpoena witnesses. 42 Stat. 168, 7 U. S. C. § 222.

The type of notice required to be given in investigative proceedings	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings	Miscellaneous comments
<p>of notice, if any, which must be given in investigative proceedings, 7 CFR § 47.3; 9 CFR § 202.3, although a specific right to notice is given in adjudicative proceedings. 7 CFR §§ 47.6, 47.27; 9 CFR §§ 202.6, 202.23, 202.39.</p>	<p>cross-examination during investigative proceedings, 7 CFR § 47.3; 9 CFR § 202.3, although such a right is given in the formal, adjudicative stage of the proceedings. 7 CFR §§ 47.15, 47.32; 9 CFR §§ 202.11, 202.29, 202.48.</p>	<p>Commodities Act. 7 CFR § 47.7. (2) It is also of interest that investigative proceedings under both the Perishable Agricultural Commodities Act and the Packers and Stockyards Act are commenced by the filing of complaints from private individuals. 7 CFR § 47.3; 9 CFR § 202.3. (3) Finally, it should be noted that the Department of Agriculture administers the Federal Seed Act, 53 Stat. 1275, 7 U. S. C. §§ 1551-1610, which makes it unlawful to engage in certain practices relating to the labeling and importation of seeds, and a statute regulating export standards for apples and pears, 48 Stat. 123, 7 U. S. C. §§ 581-589. The Rules of Practice adopted by the Secretary pursuant to statutory authorization provide that proceedings under these statutes shall be initiated by an investigation of the charges contained in any complaint received by the Secretary. These Rules make no mention of the type of notice, if any, given to those being investigated;</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
The Department of Agriculture—Con.		
Commodity Exchange Commission (Department of Agriculture).	The Commodity Exchange Act empowers the Secretary of Agriculture (acting through the Commission) to "make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior or subsequent to the enactment of" the Act. The Secretary is also empowered to "investigate marketing conditions of commodity and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges." 42 Stat. 1003, as amended, 49 Stat. 1491, 7 U.S.C. § 12.	The Secretary of Agriculture (acting through the Commission) is given the same subpoena powers as are vested in the Interstate Commerce Commission by the Interstate Commerce Act, 24 Stat. 383, 27 Stat. 443, 32 Stat. 904, 34 Stat. 798, 49 U.S.C. §§ 12, 46-48. 42 Stat. 1002, as amended, 49 Stat. 1499, 69 Stat. 160, 7 U.S.C. § 15.
Food and Drug Administration (Department of Health, Education and Welfare).	The Regulations adopted pursuant to the Federal Caustic Poison Act, 44 Stat. 1406, 15 U.S.C. §§ 401-411, authorize the Administration to conduct investigations, 21 CFR § 285.15, and to hold preliminary hearings "whenever it appears . . . that the provisions of section 3 or 6 of the Caustic Poison Act . . . have been violated and criminal proceedings are contemplated." <i>Id.</i> , § 285.17.	The Act makes no provision for compelling testimony.

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ¹	Miscellaneous comments
		nor is there any reference to cross-examination during the investigative stage of the proceedings. 7 CFR §§ 201.151, 33.17.
This is not specified by statute. The Commission has no special rules for investigations; however, its Rules of Practice provide that a private party may initiate a disciplinary proceeding by filing a complaint, and that an investigation of the complaint will be made. No mention is made of the type of notice, if any, which must be given in investigative proceedings. 17 CFR § 0.53.	This is not specified by statute. The Commission has no special rules for investigations; however, its Rules of Practice provide that a private party may initiate a disciplinary proceeding by filing a complaint, and that an investigation of the complaint will be made. No mention is made of the right to cross-examine witnesses during investigative proceedings. 17 CFR § 0.53.	It is of interest to note that investigations may be initiated by complaints from private parties, and that the information obtained during investigations may be used in a subsequent adjudicative proceeding. 17 CFR § 0.53.
This is not specified by statute. The Administration's Regulations make no reference to notice of investigative proceedings, but they do require that general notice be given to those against whom prosecution is contemplated. 21 CFR § 285.17.	This is not specified by statute. The Administration's regulations make no mention of the right to cross-examine witnesses appearing at investigative proceedings or preliminary hearings. 21 CFR § 285.17.	It should be noted that the Administration investigates specific instances of possible unlawful activity, and that, unlike the Civil Rights Commission, the Secretary (acting through the Administration) is required to refer possible violations to the proper United States Attorney. 44 Stat. 1409, 15 U. S. C. § 409 (b).

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
<p>Presidential Commissions United States Tariff Commission.</p>	<p>(1) The Commission is authorized "to investigate the administration and fiscal and industrial effects of the customs laws of this country now in force or which may be hereafter enacted, the relations between the rates of duty on raw materials and finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, . . . the operation of customs laws, including their relation to the Federal revenues, [and] their effect upon the industries and labor of the country." 46 Stat. 698, 19 U. S. C. § 1332 (a).</p> <p>(2) The Commission is also authorized "to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production." 46 Stat. 698, 19 U. S. C. § 1332 (b).</p> <p>(3) The Commission may investigate "the Paris Economy Pact and similar organizations and arrangements in Europe." 46 Stat. 698, 19 U. S. C. § 1332 (c).</p> <p>(4) The Commission is empowered to "investigate the difference in the costs of pro-</p>	<p>The Commission may, "for the purposes of carrying out its functions and duties in connection with any investigation authorized by law, . . . (1) . . . have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, co-partnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, (2) . . . summon witnesses, take testimony, and administer oaths, (3) . . . require any firm, person, co-partnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation, and (4) . . . require any person, firm, co-partnership, corporation, or association, to furnish in writing, in such detail and in such form as the commission may prescribe, information in their possession pertain-</p>

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ¹	Miscellaneous comments
<p>Many of the statutory provisions authorizing the Commission to hold hearings pursuant to its investigatory power require that reasonable notice of prospective hearings be given. 46 Stat. 701, 19 U. S. C. § 1336 (a); 65 Stat. 72, 19 U. S. C. § 1360 (b)(1); 65 Stat. 74, 19 U. S. C. § 1364 (a); 49 Stat. 774, 7 U. S. C. § 624 (a). The Commission's Rules of Practice also provide that public notice of any pending investigation shall be given. 19 CFR, 1960 Supp., § 201.10.</p>	<p>This is not specified by statute. The Commission's Rules permit a party who has entered an appearance to question a witness "for the purpose of assisting the Commission in obtaining the material facts with respect to the subject matter of the investigation." 19 CFR § 201.14. However, all questioning is done under the direction of and subject to the limitations imposed by the Commission, and a person who has not entered a formal appearance may not, as a matter of right, question witnesses. <i>Ibid.</i> See also <i>Norwegian Nitrogen Products Co. v. United States</i>, 288 U. S. 294.</p>	<p>(1) Since the Commission's investigative powers are generally exercised to aid the President in the execution of his duties under the Tariff Act, it is readily apparent that the Commission's investigations may have far reaching effects upon those persons affected by specific tariff regulations. (2) It should also be noted that business data given to the Commission may be classified as confidential, 19 CFR § 201.6, and that confidential material contained in applications for investigation and complaints will not be made available for public inspection. <i>Id.</i>, § 201.8.</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
<p>United States Tariff Commission—Con.</p>	<p>duction of any domestic article and of any like or similar foreign article." 46 Stat. 701, 19 U. S. C. § 1336 (a).</p> <p>(5) The Commission is authorized to investigate any complaint alleging that a person has engaged in unfair methods of competition or unfair acts in the importation of articles into the United States. 46 Stat. 703, 19 U. S. C. § 1337 (a), (b).</p> <p>(6) Before the President enters into negotiations concerning any proposed foreign trade agreement, the Commission is required to conduct an investigation and make a report to the President, indicating the type of agreement which will best carry out the purpose of the Tariff Act. 65 Stat. 72, 19 U. S. C. § 1360 (a).</p> <p>(7) The Commission is authorized to "make an investigation and make a report thereon . . . to determine whether any product upon which a concession has been granted under a trade agreement is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products." 65 Stat. 74, 19 U. S. C. § 1364(a).</p> <p>(8) The Commission is authorized to investigate the effects of dumping, and to determine whether because of such dumping, "an industry in the United States is being or is likely to be injured, or is prevented from being established." 42 Stat. 11, 19 U. S. C. § 160(a).</p>	<p>ing to such investigation." 46 Stat. 699, as amended, 72 Stat. 679, 19 U. S. C. § 1333 (a).</p>

The type of notice required to be given in investigative proceedings :	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings :	Miscellaneous comments

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
United States Tariff Commission—Con.	(9) Finally, the Commission is authorized to conduct investigations for the purpose of determining whether "any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under" the Agricultural Adjustment Act or the Soil Conservation and Domestic Allotment Act. 49 Stat. 773, as amended, 62 Stat. 1248, 7 U. S. C. § 624 (a).	
Commission To Investigate the Japanese Attack on Hawaii.	The Commission was authorized to investigate the attack upon Pearl Harbor in order "to provide bases for sound decisions whether any derelictions of duty or errors of judgment on the part of the United States Army or Navy personnel contributed to such successes as were achieved by the enemy on the occasion mentioned, and if so, what these derelictions or errors were, and who were responsible therefor." Exec. Order No. 8983, 6 Fed. Reg. 6569.	The Commission was authorized "to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission." 55 Stat. 854.

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ²	Miscellaneous comments
<p>Neither the Executive Order creating the Commission, Exec. Order No. 8983, 6 Fed. Reg. 6569, nor the joint resolution conferring the subpoena power upon the Commission, 55 Stat. 853, required the Commission to inform prospective witnesses of complaints lodged against them.</p>	<p>Neither the Executive Order creating the Commission, Exec. Order No. 8983, 6 Fed. Reg. 6569, nor the joint resolution conferring the subpoena power upon the Commission, 55 Stat. 853, made any mention of the right to cross-examine witnesses. An examination of the Commission's proceedings does not disclose instances wherein any witness or party to the investigation was given the right to cross-examine other witnesses. In fact, such interested parties as Admiral Kimmel and General Short, the Navy and Army commanders at Pearl Harbor, were not even present at the hearings when other</p>	<p>It is of special interest that the Commission was charged with the responsibility of determining whether the successful attack upon Pearl Harbor resulted from any individual derelictions of duty. Yet, even though the Commission's investigation had all the earmarks of an adjudication, none of the procedural safeguards demanded by the respondents in these cases were provided.</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Commission To Investigate the Japanese Attack on Hawaii—Continued.		
Temporary National Economic Committee.	<p>The Committee was authorized to investigate "monopoly and the concentration of economic power in and financial control over production and distribution of goods and services . . . with a view to determining . . . (1) the causes of such concentration and control and their effect upon competition; (2) the effect of the existing price system and the price policies of industry upon the general level of trade, upon employment, upon long-term profits, and upon consumption, and (3) the effect of existing tax, patent, and other Government policies upon competition, price levels, unemployment, profits, and consumption." 52 Stat. 705.</p>	<p>The Committee was given the same subpoena powers as were conferred upon the Securities and Exchange Commission by the Public Utility Holding Company Act, 49 Stat. 831, 15 U. S. C. § 79r(c). 52 Stat. 706.</p>
Congressional Investigating Committees' Senate Committee of Privileges (1800).	<p>The Committee was authorized to conduct an investigation into charges that William Duane, a newspaper editor, had published articles defaming the Senate. 10 Annals of Cong. 117 (1800).</p>	<p>The Committee was authorized "to send for persons, papers, and records, and compel the attendance of witnesses which may become requisite for the execution of their commission." 10 Annals of Cong. 121 (1800).</p>

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ¹	Miscellaneous comments
	witnesses were testifying. Hearings of the Joint Congressional Committee on the Investigation of the Pearl Harbor Attack, 79th Cong., 1st Sess., pts. 22-25.	
This was not specified by statute. The Rules of Procedure adopted by the Committee for the conduct of its hearings made no mention of the type of notice, if any, which was to be given to prospective witnesses. Hearings of the Temporary National Economic Committee, pt. 1, 193.	This was not specified by statute. The Rules of Procedure adopted by the Committee for the conduct of its hearings did not refer to cross-examination. There was merely a general statement that "[i]n all examination of witnesses, the rules of evidence shall be observed but liberally construed." Hearings of the Temporary National Economic Committee, pt. 1, 193.	
This was not specified by the authorizing resolution. However, a subsequent resolution provided that Duane was to be informed of the charges against him when he presented himself at the bar of the Senate. 10 Annals of Cong. 117 (1800).	This was not specified by the authorizing resolution. The Senate later rejected a motion to permit Duane "to have assistance of counsel for his defense," but allowed him to be heard through counsel "in denial of any facts charged against [him] or in excuse and extenuation of his offence." 10 Annals of Cong. 118, 119 (1800).	It should be noted that this Committee was investigating the allegedly unlawful conduct of a specific individual; yet, it does not appear that he was given the right to cross-examine adverse witnesses.

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
<p>Committee of the Senate to Investigate Whether Senator John Smith of Ohio Should Retain His Seat in the Senate (1807).</p>	<p>Senator Smith had been accused of conspiring with Aaron Burr to commit treason, and the Committee was established to investigate the charges and to inquire whether Senator Smith "should be permitted any longer to have a seat" in the Senate. 17 Annals of Cong. 40 (1807).</p>	<p>The authorizing resolution did not indicate whether the Committee had the subpoena power. 17 Annals of Cong. 40 (1807).</p>
<p>Joint Committee on the Conduct of the Civil War (1861).</p>	<p>(1) The Committee was established "to inquire into the conduct of the present [Civil] war." Cong. Globe, 37th Cong., 2d Sess. 32, 40 (1861). (2) The Committee was also authorized "to inquire into the truth of the rumored slaughter of the Union troops, after their surrender, at the recent attack of the rebel forces upon Fort Pillow, Tennessee; as, [sic] also, whether Fort Pillow could have been sufficiently reenforced or evacuated, and, if so, why it was not done." 13 Stat. 405.</p>	<p>The Committee had "the power to send for persons and papers." Cong. Globe, 37th Cong., 2d Sess. 32, 40 (1861).</p>

The type of notice required to be given in investigative proceedings ³	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ⁴	Miscellaneous comments
<p>This was not specified by the authorizing resolution. The Committee furnished Senator Smith with a description of the charges and evidence against him. Report of the Committee, 17 Annals of Cong. 56 (1807).</p>	<p>This was not specified by the authorizing resolution. Before the Committee, Senator Smith "claimed, as a right, to be heard in his defense by counsel, to have compulsory process for witnesses, and to be confronted with his accusers, as if the Committee had been a circuit court of the United States." Report of the Committee, 17 Annals of Cong. 56 (1807). However, the Committee rejected these claims on the ground that it was not a court, but rather a body whose function it was to investigate and report the facts relating to Senator Smith's conduct. <i>Ibid.</i></p>	<p>Here again, it should be observed that the Committee was investigating the conduct of a particular individual, and that the Committee's findings could have had severe consequences on that individual.</p>
<p>This was not specified by the authorizing resolution. Many of the generals whose conduct was being investigated were given no notice of the charges that had been leveled against them. Botterud, The Joint Committee on the Conduct of the Civil War (M.A. Thesis, Georgetown University, 1949), 42.</p>	<p>This was not specified by the authorizing resolution. Many of the generals whose conduct was being investigated were not given the right to be assisted by counsel or to cross-examine other witnesses. Botterud, The Joint Committee on the Conduct of the Civil War (M.A. Thesis, Georgetown University, 1949), 42.</p>	<p>It should be noted that the Committee's investigation frequently centered on the allegedly derelict conduct of specific individuals. Botterud, The Joint Committee on the Conduct of the Civil War (M.A. Thesis, Georgetown University, 1949), 42.</p>

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
<p>House Committee to Investigate the Electric Boat Company of New Jersey (1908).</p>	<p>The Committee was established to investigate charges that the Electric Boat Company of New Jersey had "been engaged in efforts to exert corrupting influence on certain Members of Congress in their legislative capacities, and . . . [had], in fact, exerted such corrupting influence." H. R. Res. 288, 60th Cong., 1st Sess., 42 Cong. Rec. 2972.</p>	<p>The Committee had authority "to send for persons and papers." H. R. Res. 288, 60th Cong., 1st Sess., 42 Cong. Rec. 2972.</p>
<p>House Committee to Investigate Violations of the Antitrust Laws by the American Sugar Refining Co. (1911).</p>	<p>(1) The Committee was authorized to conduct an investigation "for the purpose of ascertaining whether or not there have been violations of the antitrust act of July 2, 1890, and the various acts supplementary thereto, by the American Sugar Refining Co.," and further, to "investigate the organization and operations of said American Sugar Refining Co., and its relations with other persons or corporations engaged in the business of manufacturing or refining sugar, and all other persons or corporations engaged in manufacturing or refining sugar and their relations with each other." H. R. Res., 157, 62d Cong., 1st Sess., 47 Cong. Rec. 1143.</p>	<p>The Committee was authorized "to compel the attendance of witnesses, [and] to send for persons and papers." H. R. Res. 157, 62d Cong., 1st Sess., 47 Cong. Rec. 1143.</p>
<p>Senate Committee to Investigate Lobbying (1935-1936).</p>	<p>The Committee was authorized "to make a full and complete investigation of all lobbying activities and all efforts to influence, encourage, promote, or retard legislation, directly or indirectly, in connection with the so-called 'holding-company bill',</p>	<p>The Committee was authorized "to require by subpoena or otherwise the attendance of such witnesses and the production of such</p>

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ²	Miscellaneous comments
<p>This was not specified by the authorizing resolution. However, most of the charges which led to the investigation were made in public hearings before the Rules Committee of the House. H.R. Rep. No. 1168, 60th Cong., 1st Sess.</p>	<p>The questioning of all witnesses was conducted by the Committee, although the parties being investigated were permitted to submit written interrogatories for the Committee to propound to certain witnesses. H. R. Rep. No. 1727, 60th Cong., 1st Sess. 11.</p>	<p>It is of interest that the Committee was investigating specific charges of corruption leveled against named individuals.</p>
<p>This was not specified by the authorizing resolution. Nor was this specified by the Committee's Rules of Procedure.</p>	<p>This was not specified by the authorizing statute. The Committee's Rules of Procedure provided that "counsel may attend witnesses summoned before this committee, but may not participate in the proceedings, either by way of examination or argument, except upon permission given by the committee, from time to time, as the occasion arises." Hearings before the Special Committee on the Investigation of the American Sugar Refining Co., 62d Cong., 1st Sess., Vol. 1, 3.</p>	<p>Once again, it should be noted that the Committee was established to investigate, among other things, possible violations of the law.</p>
<p>This was not specified by the authorizing resolution.</p>	<p>This was not specified by the authorizing resolution. The Committee adopted a rule that witnesses and their attorneys could not examine other wit-</p>	

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Senate Committee to Investigate Lobbying (1935-1936)—Con.	or any other matter or proposal affecting legislation." S. Res. 165, 74th Cong., 1st Sess., 79 Cong. Rec. 11003.	correspondence, books, papers, and documents . . . as it . . . [deemed] advisable." S. Res. 165, 74th Cong., 1st Sess., 79 Cong. Rec. 11003.

¹ This Appendix describes the Rules of Procedure governing the authorized investigative proceedings of a representative group of administrative agencies, executive departments, presidential commissions, and congressional committees. The Appendix does not purport to be a complete enumeration of the hundreds of agencies which have conducted investigations during the course of this country's history. Rather, it is designed to demonstrate that the procedures adopted by the Civil Rights Commission are similar to those which have traditionally been used by investigating agencies in both the executive and legislative branches of our Government.

² We have found many other administrative agencies and presidential commissions empowered to conduct investigations and to subpoena witnesses. Those agencies are not listed in the body of this Appendix because we were unable to find an adequate description of the rules of procedure governing their investigative proceedings. However, it is significant that the statutes creating these agencies made no reference to appraisal or cross-examination in investigative proceedings. Among the agencies in this category are: (1) Bureau of Corporations in the Department of Commerce and Labor, 32 Stat. 827; (2) Commission on Industrial Relations, 37 Stat. 415; (3) the Railroad Labor Board, 41 Stat. 469; (4) the United States Coal Commission, 42 Stat. 1023; (5) the Investigation Commission established by the Railroad Retirement Act of 1935, 49 Stat. 972; (6) National Bituminous Coal Commission, 49 Stat. 992; (7) Wage and Hour Division of the Department of Labor, 52 Stat. 1061; (8) Board of Investigation to Investigate Various Modes of Transportation, 54 Stat. 952; (9) Commission on Organization of the Executive Branch of the Government, 67 Stat. 143; (10) Commission on Intergovernmental Relations, 67 Stat. 145.

³ If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, e.g., the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

⁴ If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference

The type of notice required to be given in investigative proceedings ¹	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings ¹	Miscellaneous comments
	nesses; however, they could submit written questions, which the Committee would consider propounding to other witnesses. Hearings before Special Senate Committee to Investigate Lobbying Activities, 74th Cong., 2d Sess. 1469.	

is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, e.g., 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

¹ The Office of Price Stabilization is now defunct, having been terminated by Exec. Order No. 10434, 18 Fed. Reg. 809.

² The Office of Price Administration is now defunct, its functions having been transferred to the Office of Temporary Controls by Exec. Order No. 9809, 11 Fed. Reg. 14281, which in turn was terminated by Exec. Order No. 9841, 12 Fed. Reg. 2645.

³ In addition to the investigating committees listed in the body of the Appendix, we think mention should also be made of the contemporary standing committees of Congress. Most of these committees have rules very similar to those adopted by the Civil Rights Commission. The Rules of Procedure of the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration are typical. Rule 17 of the Rules reads as follows:

"There shall be no direct or cross examination by counsel appearing for a witness. However, the counsel may submit in writing any question or questions he wishes propounded to his client or to any other witness. With the consent of the majority of the Members of the Subcommittee present and voting, such question or questions shall be put to the witness by the Chairman, by a Member of the Subcommittee or by the Counsel of the Subcommittee either in the original form or in modified language. The decision of the Subcommittee as to the admissibility of questions submitted by counsel for a witness, as well as to their form, shall be final."

See also S. Rep. No. 2, 84th Cong., 1st Sess. 20; Hearings before the Subcommittee on Rules of the Senate Committee on Rules and Administration, on S. Res. 65, 146, 223, 249, 253, 256, S. Con. Res. 11, and 86, 83d Cong., 2d Sess., Part 3, 141-142, 344, 345, 374; Rules of Procedure of the Select Committee on Improper Activities in the Labor or Management Field, Rules 10 and 11. Reference has been made in the text, *supra*, pp. 436-439, to the House "fair play" rules, which govern the hearings of most House Committees, and which make no provision for cross-examination.

Argument for Plaintiff in Error.

GONG LUM ET AL. v. RICE ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

No. 29. Submitted October 12, 1927.—Decided November 21, 1927.

A child of Chinese blood, born in, and a citizen of, the United States, is not denied the equal protection of the laws by being classed by the State among the colored races who are assigned to public schools separate from those provided for the whites, when equal facilities for education are afforded to both classes. P. 85.

139 Miss. 760, affirmed.

— ERROR to a judgment of the Supreme Court of Mississippi, reversing a judgment awarding the writ of mandamus. The writ was applied for in the interest of Martha Lum, a child of Chinese blood, born in the United States, and was directed to the trustees of a high school district and the State Superintendant of Education, commanding them to cease discriminating against her and to admit her to the privileges of the high school specified, which was assigned to white children exclusively.

Messrs. J. N. Flowers, Earl Brewer, and Edward C. Brewer for plaintiff in error.

The white, or Caucasian, race, which makes the laws and construes and enforces them, thinks that in order to protect itself against the infusion of the blood of other races its children must be kept in schools from which other races are excluded. The classification is made for the exclusive benefit of the law-making race. The basic assumption is that if the children of two races associate daily in the school room the two races will at last intermix; that the purity of each is jeopardized by the mingling of the children in the school room; that such association among children means social intercourse and social equality. This danger, the white race, by its laws, seeks to divert from itself. It levies the taxes on all alike to

support a public school system, but in the organization of the system it creates its own exclusive schools for its children, and other schools for the children of all other races to attend together.

If there is danger in the association, it is a danger from which one race is entitled to protection just the same as another. The white race may not legally expose the yellow race to a danger that the dominant race recognizes and, by the same laws, guards itself against. The white race creates for itself a privilege that it denies to other races; exposes the children of other races to risks and dangers to which it would not expose its own children. This is discrimination. *Lehew v. Brummell*, 103 Mo. 549; *Strauder v. West Virginia*, 100 U. S. 303.

Color may reasonably be used as a basis for classification only in so far as it indicates a particular race. Race may reasonably be used as a basis. "Colored" describes only one race, and that is the negro. *State v. Treadway*, 126 La. 52; *Lehew v. Brummell*, *supra*; *Plessy v. Ferguson*, 163 U. S. 537; *Berea College v. Kentucky*, 133 Ky. 209; *West Chester R. R. v. Miles*, 55 Pa. St. 209; *Tucker v. Blease*, 97 S. C. 303.

Messrs. Rush H. Knox, Attorney General of Mississippi, and *E. C. Sharp* for defendants in error.

MR. CHIEF JUSTICE TART delivered the opinion of the Court.

This was a petition for mandamus filed in the state Circuit Court of Mississippi for the First Judicial District of Bolivar County.

Gong Lum is a resident of Mississippi, resides in the Rosedale Consolidated High School District, and is the father of Martha Lum. He is engaged in the mercantile business. Neither he nor she was connected with the consular service or any other service of the government of China, or any other government, at the time of her birth.

She was nine years old when the petition was filed, having been born January 21, 1915, and she sued by her next friend, Chew How, who is a native born citizen of the United States and the State of Mississippi. The petition alleged that she was of good moral character and between the ages of five and twenty-one years, and that, as she was such a citizen and an educable child, it became her father's duty under the law to send her to school; that she desired to attend the Rosedale Consolidated High School; that at the opening of the school she appeared as a pupil, but at the noon recess she was notified by the superintendent that she would not be allowed to return to the school; that an order had been issued by the Board of Trustees, who are made defendants, excluding her from attending the school solely on the ground that she was of Chinese descent and not a member of the white or Caucasian race, and that their order had been made in pursuance to instructions from the State Superintendent of Education of Mississippi, who is also made a defendant.

The petitioners further show that there is no school maintained in the District for the education of children of Chinese descent, and none established in Bolivar County where she could attend.

The Constitution of Mississippi requires that there shall be a county common school fund, made up of poll taxes from the various counties, to be retained in the counties where the same is collected, and a state common school fund to be taken from the general fund in the state treasury, which together shall be sufficient to maintain a common school for a term of four months in each scholastic year, but that any county or separate school district may levy an additional tax to maintain schools for a longer time than a term of four months, and that the said common school fund shall be distributed among the several counties and separate school districts in proportion to the number of educable children in each, to be collected

from the data in the office of the State Superintendent of Education in the manner prescribed by law; that the legislature encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement, by the establishment of a uniform system of free public schools by taxation or otherwise, for all children between the ages of five and twenty-one years, and, as soon as practicable, establish schools of higher grade.

The petition alleged that, in obedience to this mandate of the Constitution, the legislature has provided for the establishment and for the payment of the expenses of the Rosedale Consolidated High School, and that the plaintiff, Gong Lum, the petitioner's father, is a taxpayer and helps to support and maintain the school; that Martha Lum is an educable child, is entitled to attend the school as a pupil, and that this is the only school conducted in the District available for her as a pupil; that the right to attend it is a valuable right; that she is not a member of the colored race nor is she of mixed blood, but that she is pure Chinese; that she is by the action of the Board of Trustees and the State Superintendent discriminated against directly and denied her right to be a member of the Rosedale School; that the school authorities have no discretion under the law as to her admission as a pupil in the school, but that they continue without authority of law to deny her the right to attend it as a pupil. For these reasons the writ of mandamus is prayed for against the defendants commanding them and each of them to desist from discriminating against her on account of her race or ancestry and to give her the same rights and privileges that other educable children between the ages of five and twenty-one are granted in the Rosedale Consolidated High School.

The petition was demurred to by the defendants on the ground, among others, that the bill showed on its face that plaintiff is a member of the Mongolian or yellow race, and

therefore not entitled to attend the schools provided by law in the State of Mississippi for children of the white or Caucasian race.

The trial court overruled the demurrer and ordered that a writ of mandamus issue to the defendants as prayed in the petition.

The defendants then appealed to the Supreme Court of Mississippi, which heard the case. *Rice v. Gong Lum*, 139 Miss. 760. In its opinion, it directed its attention to the proper construction of § 207 of the State Constitution of 1890, which provides:

“Separate schools shall be maintained for children of the white and colored races.”

The Court held that this provision of the Constitution divided the educable children into those of the pure white or Caucasian race, on the one hand, and the brown, yellow and black races, on the other, and therefore that Martha Lum of the Mongolian or yellow race could not insist on being classed with the whites under this constitutional division. The Court said:

“The legislature is not compelled to provide separate schools for each of the colored races, and, unless and until it does provide such schools and provide for segregation of the other races, such races are entitled to have the benefit of the colored public schools. Under our statutes a colored public school exists in every county and in some convenient district in which every colored child is entitled to obtain an education. These schools are within the reach of all the children of the state, and the plaintiff does not show by her petition that she applied for admission to such schools. On the contrary the petitioner takes the position that because there are no separate public schools for Mongolians that she is entitled to enter the white public schools in preference to the colored public schools. A consolidated school in this state is simply a common school conducted as other common schools are conducted;

the only distinction being that two or more school districts have been consolidated into one school. Such consolidation is entirely discretionary with the county school board having reference to the condition existing in the particular territory. Where a school district has an unusual amount of territory, with an unusual valuation of property therein, it may levy additional taxes. But the other common schools under similar statutes have the same power.

"If the plaintiff desires, she may attend the colored public schools of her district, or, if she does not so desire, she may go to a private school. The compulsory school law of this state does not require the attendance at a public school, and a parent under the decisions of the Supreme Court of the United States has a right to educate his child in a private school if he so desires. But plaintiff is not entitled to attend a white public school."

As we have seen, the plaintiffs aver that the Rosedale Consolidated High School is the only school conducted in that district available for Martha Lum as a pupil. They also aver that there is no school maintained in the district of Bolivar County for the education of Chinese children and none in the county. How are these averments to be reconciled with the statement of the State Supreme Court that colored schools are maintained in every county by virtue of the Constitution? This seems to be explained, in the language of the State Supreme Court, as follows:

"By statute it is provided that all the territory of each county of the state shall be divided into school districts separately for the white and colored races; that is to say, the whole territory is to be divided into white school districts, and then a new division of the county for colored school districts. In other words, the statutory scheme is to make the districts outside of the separate school districts, districts for the particular race, white or colored, so that the territorial limits of the school districts need

not be the same, but the territory embraced in a school district for the colored race may not be the same territory embraced in the school district for the white race, and *vice versa*, which system of creating the common school districts for the two races, white and colored, does not require schools for each race as such to be maintained in each district, but each child, no matter from what territory, is assigned to some school district, the school buildings being separately located and separately controlled, but each having the same curriculum, and each having the same number of months of school term, if the attendance is maintained for the said statutory period, which school district of the common or public schools has certain privileges, among which is to maintain a public school by local taxation for a longer period of time than the said term of four months under named conditions which apply alike to the common schools for the white and colored races."

We must assume then that there are school districts for colored children in Bolivar County, but that no colored school is within the limits of the Rosedale Consolidated High School District. This is not inconsistent with there being, at a place outside of that district and in a different district, a colored school which the plaintiff Martha Lum, may conveniently attend. If so, she is not denied, under the existing school system, the right to attend and enjoy the privileges of a common school education in a colored school. If it were otherwise, the petition should have contained an allegation showing it. Had the petition alleged specifically that there was no colored school in Martha Lum's neighborhood to which she could conveniently go, a different question would have been presented, and this, without regard to the State Supreme Court's construction of the State Constitution as limiting the white schools provided for the education of children of the white or Caucasian race. But we do not find the petition to present such a situation.

The case then reduces itself to the question whether a state can be said to afford to a child of Chinese ancestry born in this country, and a citizen of the United States, equal protection of the laws by giving her the opportunity for a common school education in a school which receives only colored children of the brown, yellow or black races.

The right and power of the state to regulate the method of providing for the education of its youth at public expense is clear. In *Cumming v. Richmond County Board of Education*, 175 U. S. 528, 545, persons of color sued the Board of Education to enjoin it from maintaining a high school for white children without providing a similar school for colored children which had existed and had been discontinued. Mr. Justice Harlan, in delivering the opinion of the Court, said:

"Under the circumstances disclosed, we cannot say that this action of the state court was, within the meaning of the Fourteenth Amendment, a denial by the State to the plaintiffs and to those associated with them of the equal protection of the laws, or of any privileges belonging to them as citizens of the United States. We may add that while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective States, and any interference on the part of Federal authority with the management of such schools can not be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."

(The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow or black.) Were this a new question,

it would call for very full argument and consideration, but we think that it is the same question which has been many times decided to be within the constitutional power of the state legislature to settle without intervention of the federal courts under the Federal Constitution. *Roberts v. City of Boston*, 5 Cush. (Mass.) 198, 206, 208, 209; *State ex rel. Garnes v. McCann*, 21 Oh. St. 198, 210; *People ex rel. King v. Gallagher*, 93 N. Y. 438; *People ex rel. Cisco v. School Board*, 161 N. Y. 598; *Ward v. Flood*, 48 Cal. 36; *Wysinger v. Crookshank*, 82 Cal. 588, 590; *Reynolds v. Board of Education*, 60 Kans. 672; *McMillan v. School Committee*, 107 N. C. 609; *Cory v. Carter*, 48 Ind. 327; *Lehew v. Brummell*, 103 Mo. 546; *Dameron v. Bayless*, 14 Ariz. 180; *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 342, 348, 355; *Bertonneau v. Board*, 3 Woods 177, s. c. 3 Fed. Cases, 294, Case No. 1,361; *United States v. Buntin*, 10 Fed. 730, 735; *Wong Him v. Callahan*, 119 Fed. 381.

In *Plessy v. Ferguson*, 163 U. S. 537, 544, 545, in upholding the validity under the Fourteenth Amendment of a statute of Louisiana requiring the separation of the white and colored races in railway coaches, a more difficult question than this, this Court, speaking of permitted race separation, said:

"The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced."

The case of *Roberts v. City of Boston*, *supra*, in which Chief Justice Shaw of the Supreme Judicial Court of Massachusetts, announced the opinion of that court upholding the separation of colored and white schools under

a state constitutional injunction of equal protection, the same as the Fourteenth Amendment, was then referred to, and this Court continued:

"Similar laws have been enacted by Congress under its general power of legislation over the District of Columbia, Rev. Stat. D. C. §§ 281, 282, 283, 310, 319, as well as by the legislatures of many of the States, and have been generally, if not uniformly, sustained by the Courts," citing many of the cases above named.

Most of the cases cited arose, it is true, over the establishment of separate schools as between white pupils and black pupils, but we can not think that the question is any different or that any different result can be reached, assuming the cases above cited to be rightly decided, where the issue is as between white pupils and the pupils of the yellow races. The decision is within the discretion of the state in regulating its public schools and does not conflict with the Fourteenth Amendment. The judgment of the Supreme Court of Mississippi is

Affirmed.

1927

c.g.

William Howard Taft

Oliver Wendell Holmes

Will. Van Devanter

James Clark McReynolds

Louis D. Brandeis

George Sutherland

Pierce Butler

Edward T. Sanford

Harlan Fiske Stone

Syllabus.

**BROWN ET AL. V. BOARD OF EDUCATION
OF TOPEKA ET AL.****NO. 1. APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS.***

Argued December 9, 1952.—Reargued December 8, 1953.—
Decided May 17, 1954.

Segregation of white and Negro children in the public schools of a State solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment—even though the physical facilities and other “tangible” factors of white and Negro schools may be equal. Pp. 486–496.

(a) The history of the Fourteenth Amendment is inconclusive as to its intended effect on public education. Pp. 489–490.

(b) The question presented in these cases must be determined, not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the Nation. Pp. 492–493.

(c) Where a State has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right which must be made available to all on equal terms. P. 493.

(d) Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other “tangible” factors may be equal. Pp. 493–494.

(e) The “separate but equal” doctrine adopted in *Plessy v. Ferguson*, 163 U. S. 537, has no place in the field of public education. P. 495.

*Together with No. 2, *Briggs et al. v. Elliott et al.*, on appeal from the United States District Court for the Eastern District of South Carolina, argued December 9–10, 1952, reargued December 7–8, 1953; No. 4, *Davis et al. v. County School Board of Prince Edward County, Virginia, et al.*, on appeal from the United States District Court for the Eastern District of Virginia, argued December 10, 1952, reargued December 7–8, 1953; and No. 10, *Gebhart et al. v. Belton et al.*, on certiorari to the Supreme Court of Delaware, argued December 11, 1952, reargued December 9, 1953.

(f) The cases are restored to the docket for further argument on specified questions relating to the forms of the decrees. Pp. 495-496.

Robert L. Carter argued the cause for appellants in No. 1 on the original argument and on the reargument. *Thurgood Marshall* argued the cause for appellants in No. 2 on the original argument and *Spottswood W. Robinson, III*, for appellants in No. 4 on the original argument, and both argued the causes for appellants in Nos. 2 and 4 on the reargument. *Louis L. Redding* and *Jack Greenberg* argued the cause for respondents in No. 10 on the original argument and *Jack Greenberg* and *Thurgood Marshall* on the reargument.

On the briefs were *Robert L. Carter*, *Thurgood Marshall*, *Spottswood W. Robinson, III*, *Louis L. Redding*, *Jack Greenberg*, *George E. C. Hayes*, *William R. Ming, Jr.*, *Constance Baker Motley*, *James M. Nabrit, Jr.*, *Charles S. Scott*, *Frank D. Reeves*, *Harold R. Boulware* and *Oliver W. Hill* for appellants in Nos. 1, 2 and 4 and respondents in No. 10; *George M. Johnson* for appellants in Nos. 1, 2 and 4; and *Loren Miller* for appellants in Nos. 2 and 4. *Arthur D. Shores* and *A. T. Walden* were on the Statement as to Jurisdiction and a brief opposing a Motion to Dismiss or Affirm in No. 2.

Paul E. Wilson, Assistant Attorney General of Kansas, argued the cause for appellees in No. 1 on the original argument and on the reargument. With him on the briefs was *Harold R. Fatzer*, Attorney General.

John W. Davis argued the cause for appellees in No. 2 on the original argument and for appellees in Nos. 2 and 4 on the reargument. With him on the briefs in No. 2 were *T. C. Callison*, Attorney General of South Carolina, *Robert McC. Figg, Jr.*, *S. E. Rogers*, *William R. Meagher* and *Taggart Whipple*.

J. Lindsay Almond, Jr., Attorney General of Virginia, and *T. Justin Moore* argued the cause for appellees in No. 4 on the original argument and for appellees in Nos. 2 and 4 on the reargument. On the briefs in No. 4 were *J. Lindsay Almond, Jr.*, Attorney General, and *Henry T. Wickham*, Special Assistant Attorney General, for the State of Virginia, and *T. Justin Moore*, *Archibald G. Robertson*, *John W. Riely* and *T. Justin Moore, Jr.* for the Prince Edward County School Authorities, appellees.

H. Albert Young, Attorney General of Delaware, argued the cause for petitioners in No. 10 on the original argument and on the reargument. With him on the briefs was *Louis J. Finger*, Special Deputy Attorney General.

By special leave of Court, *Assistant Attorney General Rankin* argued the cause for the United States on the reargument, as *amicus curiae*, urging reversal in Nos. 1, 2 and 4 and affirmance in No. 10. With him on the brief were *Attorney General Brownell*, *Philip Elman*, *Leon Ulman*, *William J. Lamont* and *M. Magdalena Schoch*. *James P. McGranery*, then Attorney General, and *Philip Elman* filed a brief for the United States on the original argument, as *amicus curiae*, urging reversal in Nos. 1, 2 and 4 and affirmance in No. 10.

Briefs of *amici curiae* supporting appellants in No. 1 were filed by *Shad Polier*, *Will Maslow* and *Joseph B. Robison* for the American Jewish Congress; by *Edwin J. Lukas*, *Arnold Forster*, *Arthur Garfield Hays*, *Frank E. Karelsen*, *Leonard Haas*, *Saburo Kido* and *Theodore Leskes* for the American Civil Liberties Union et al.; and by *John Ligtenberg* and *Selma M. Borchardt* for the American Federation of Teachers. Briefs of *amici curiae* supporting appellants in No. 1 and respondents in No. 10 were filed by *Arthur J. Goldberg* and *Thomas E. Harris*

for the Congress of Industrial Organizations and by *Phineas Indritz* for the American Veterans Committee, Inc.

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.¹

¹ In the Kansas case, *Brown v. Board of Education*, the plaintiffs are Negro children of elementary school age residing in Topeka. They brought this action in the United States District Court for the District of Kansas to enjoin enforcement of a Kansas statute which permits, but does not require, cities of more than 15,000 population to maintain separate school facilities for Negro and white students. Kan. Gen. Stat. § 72-1724 (1949). Pursuant to that authority, the Topeka Board of Education elected to establish segregated elementary schools. Other public schools in the community, however, are operated on a nonsegregated basis. The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, found that segregation in public education has a detrimental effect upon Negro children, but denied relief on the ground that the Negro and white schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. 98 F. Supp. 797. The case is here on direct appeal under 28 U. S. C. § 1253.

In the South Carolina case, *Briggs v. Elliott*, the plaintiffs are Negro children of both elementary and high school age residing in Clarendon County. They brought this action in the United States District Court for the Eastern District of South Carolina to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. S. C. Const., Art. XI, § 7; S. C. Code § 5377 (1942). The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, denied the requested relief. The court found that the Negro schools were inferior to the white schools and ordered the defendants to begin immediately to equalize the facilities. But the court sustained the validity of the contested provisions and denied the plaintiffs admis-

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance,

sion to the white schools during the equalization program. 98 F. Supp. 529. This Court vacated the District Court's judgment and remanded the case for the purpose of obtaining the court's views on a report filed by the defendants concerning the progress made in the equalization program. 342 U. S. 350. On remand, the District Court found that substantial equality had been achieved except for buildings and that the defendants were proceeding to rectify this inequality as well. 103 F. Supp. 920. The case is again here on direct appeal under 28 U. S. C. § 1253.

In the Virginia case, *Davis v. County School Board*, the plaintiffs are Negro children of high school age residing in Prince Edward County. They brought this action in the United States District Court for the Eastern District of Virginia to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Va. Const., § 140; Va. Code § 22-221 (1950). The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, denied the requested relief. The court found the Negro school inferior in physical plant, curricula, and transportation, and ordered the defendants forthwith to provide substantially equal curricula and transportation and to "proceed with all reasonable diligence and dispatch to remove" the inequality in physical plant. But, as in the South Carolina case, the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 103 F. Supp. 337. The case is here on direct appeal under 28 U. S. C. § 1253.

In the Delaware case, *Gebhart v. Belton*, the plaintiffs are Negro children of both elementary and high school age residing in New Castle County. They brought this action in the Delaware Court of Chancery to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Del. Const., Art. X, § 2; Del. Rev. Code § 2631 (1935). The Chancellor gave judgment for the plaintiffs and ordered their immediate admission to schools previously attended only by white children, on the ground that the Negro schools were inferior with respect to teacher training, pupil-teacher ratio, extracurricular activities, physical plant, and time and distance in-

they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy v. Ferguson*, 163 U.S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction.² Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.³

volved in travel. 87 A. 2d 862. The Chancellor also found that segregation itself results in an inferior education for Negro children (see note 10, *infra*), but did not rest his decision on that ground. *Id.*, at 865. The Chancellor's decree was affirmed by the Supreme Court of Delaware, which intimated, however, that the defendants might be able to obtain a modification of the decree after equalization of the Negro and white schools had been accomplished. 91 A. 2d 137, 152. The defendants, contending only that the Delaware courts had erred in ordering the immediate admission of the Negro plaintiffs to the white schools, applied to this Court for certiorari. The writ was granted, 344 U. S. 891. The plaintiffs, who were successful below, did not submit a cross-petition.

² 344 U. S. 1, 141, 891.

³ 345 U. S. 972. The Attorney General of the United States participated both Terms as *amicus curiae*.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time.⁴ In the South, the movement toward free common schools, sup-

⁴ For a general study of the development of public education prior to the Amendment, see Butts and Cremin, *A History of Education in American Culture* (1953), Pts. I, II; Cubberley, *Public Education in the United States* (1934 ed.), cc. II-XII. School practices current at the time of the adoption of the Fourteenth Amendment are described in Butts and Cremin, *supra*, at 269-275; Cubberley, *supra*, at 288-339, 408-431; Knight, *Public Education in the South* (1922), cc. VIII, IX. See also H. Ex. Doc. No. 315, 41st Cong., 2d Sess. (1871). Although the demand for free public schools followed substantially the same pattern in both the North and the South, the development in the South did not begin to gain momentum until about 1850, some twenty years after that in the North. The reasons for the somewhat slower development in the South (*e. g.*, the rural character of the South and the different regional attitudes toward state assistance) are well explained in Cubberley, *supra*, at 408-423. In the country as a whole, but particularly in the South, the War

ported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race.^a The doctrine of

virtually stopped all progress in public education. *Id.*, at 427-428. The low status of Negro education in all sections of the country, both before and immediately after the War, is described in Beale, *A History of Freedom of Teaching in American Schools* (1941), 112-132, 175-195. Compulsory school attendance laws were not generally adopted until after the ratification of the Fourteenth Amendment, and it was not until 1918 that such laws were in force in all the states. Cubberley, *supra*, at 563-565.

^a *Slaughter-House Cases*, 16 Wall. 36, 67-72 (1873); *Strauder v. West Virginia*, 100 U. S. 303, 307-308 (1880):

"It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but

"separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*, supra, involving not education but transportation.⁶ American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education.⁷ In *Cumming v. County Board of Education*, 175 U. S. 528, and *Gong Lum v. Rice*, 275 U. S. 78, the validity of the doctrine itself was not challenged.⁸ In more recent cases, all on the graduate school

declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."

See also *Virginia v. Rives*, 100 U. S. 313, 318 (1880); *Ex parte Virginia*, 100 U. S. 339, 344-345 (1880).

⁶The doctrine apparently originated in *Roberts v. City of Boston*, 59 Mass. 198, 206 (1850), upholding school segregation against attack as being violative of a state constitutional guarantee of equality. Segregation in Boston public schools was eliminated in 1855. Mass. Acts 1855, c. 256. But elsewhere in the North segregation in public education has persisted in some communities until recent years. It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern.

⁷See also *Berea College v. Kentucky*, 211 U. S. 45 (1908).

⁸In the *Cumming* case, Negro taxpayers sought an injunction requiring the defendant school board to discontinue the operation of a high school for white children until the board resumed operation of a high school for Negro children. Similarly, in the *Gong Lum* case, the plaintiff, a child of Chinese descent, contended only that state authorities had misapplied the doctrine by classifying him with Negro children and requiring him to attend a Negro school.

level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Sipuel v. Oklahoma*, 332 U. S. 631; *Sweatt v. Painter*, 339 U. S. 629; *McLaurin v. Oklahoma State Regents*, 339 U. S. 637. In none of these cases was it necessary to re-examine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter*, *supra*, the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt v. Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors.* Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout

* In the Kansas case, the court below found substantial equality as to all such factors. 98 F. Supp. 797, 798. In the South Carolina case, the court below found that the defendants were proceeding "promptly and in good faith to comply with the court's decree." 103 F. Supp. 920, 921. In the Virginia case, the court below noted that the equalization program was already "afoot and progressing" (103 F. Supp. 337, 341); since then, we have been advised, in the Virginia Attorney General's brief on reargument, that the program has now been completed. In the Delaware case, the court below similarly noted that the state's equalization program was well under way. 91 A. 2d 137, 149.

the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt v. Painter, supra*, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin v. Oklahoma State Regents, supra*, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."

Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [re-tard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."¹⁰

Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority.¹¹ Any lan-

¹⁰ A similar finding was made in the Delaware case: "I conclude from the testimony that in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated." 87 A.2d 862, 865.

¹¹ K. B. Clark, *Effect of Prejudice and Discrimination on Personality Development* (Midcentury White House Conference on Children and Youth, 1950); Witmer and Kotinsky, *Personality in the Making* (1952), c. VI; Deutscher and Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, 26 J. Psychol. 259 (1948); Chein, *What are the Psychological Effects of*

guage in *Plessy v. Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.¹²

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term.¹³ The Attorney General

Segregation Under Conditions of Equal Facilities?, 3 Int. J. Opinion and Attitude Res. 229 (1949); Brameld, Educational Costs, in Discrimination and National Welfare (MacIver, ed., 1949), 44-48; Frazier, The Negro in the United States (1949), 674-681. And see generally Myrdal, An American Dilemma (1944).

¹² See *Bolling v. Sharpe*, post, p. 497, concerning the Due Process Clause of the Fifth Amendment.

¹³ "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(a) would a decree necessarily follow providing that, within the

of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954."

It is so ordered.

limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so, what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

"See Rule 42, Revised Rules of this Court (effective July 1, 1954).

BRIGGS et al. v. ELLIOTT et al.**Civ. A. No. 2657.****United States District Court
E. D. South Carolina, Charleston Division.****Heard May 28, 1951.****Decided June 23, 1951.**

Harry Briggs, Jr., and others sued R. W. Elliott, chairman, and the other members of the Board of Trustees of School District No. 22, Clarendon County, South Carolina, and others for a declaratory judgment and injunctive relief. The three judge district court, Parker, Circuit Judge, held that the plaintiffs were entitled to a declaration to the effect that the school facilities afforded Negro children in the district were not equal to the facilities afforded white children in the district and to a mandatory injunction requiring that equal facilities be afforded them, but held that the segregation of the races in the public schools, as required by the Constitution and statutes of South Carolina, was not of itself a denial of the equal

protection of the laws guaranteed by the Fourteenth Amendment.

Decree in accordance with opinion.

Waring, J., dissented.

1. Constitutional law § 220

Schools and school districts § 13

When state undertakes public education, it may not, without denying equal protection of laws, discriminate against any individual on account of race, but must offer equal opportunity to all, and therefore, where separate schools are maintained for Negroes and whites, educational facilities and opportunities afforded must be equal. U.S.C.A. Const. Amend. 14.

(R)

**2. Declaratory Judgment & 385
Injunction & 94**

In suit for declaratory judgment and injunctive relief brought by Negro children of school age and their parents and guardians against school officials having control of schools in district, where defendants admitted upon record that educational facilities afforded in district for colored pupils were not substantially equal to those afforded for white pupils, plaintiffs would be entitled to declaration to that effect and to mandatory injunction requiring that equal facilities be afforded them. U.S.C.A. Const. Amend. 14.

**3. Constitutional law & 70(3)
Schools and school districts & 13**

Segregation of races in public schools, so long as equality of rights is preserved, is matter of legislative policy for several states, with which federal courts are powerless to interfere.

4. Constitutional law & 81

Each state must determine for itself, subject to observance of fundamental rights and liberties guaranteed by federal Constitution, how it shall exercise police power; that is, the power to legislate with respect to safety, morals, health and general welfare.

5. Constitutional law & 220

Segregation of races in public schools, as required by Constitution and statutes of South Carolina, is not of itself a denial of equal protection of laws guaranteed by Fourteenth Amendment. U.S.C.A. Const. Amend. 14.

A. Courts & 96(1)

Federal District Court may not ignore unreversed decisions of Supreme Court of United States which are squarely in point and conclusive of questions before it.

7. Courts & 262.4(6)

Where segregation of races in public schools is required by state law, federal

District Court, as court of equity, should exercise its power to assure children allegedly provided with inferior facilities that equality of treatment to which they are entitled, with due regard to legislative policy of state, but court should not use its power to abolish segregation in state where it is required by law if the equality demanded by Constitution can be attained otherwise.

Thurgood Marshall, Robert L. Carter, New York City, Harold R. Boulware, Columbia, S. C., Spottswood W. Robinson, III, Richmond, Va., Arthur Shores, Birmingham, Ala., A. T. Walden, Atlanta, Ga., for plaintiffs.

T. C. Callison Atty. Gen., of South Carolina, Robert McC. Figg, Jr., Charleston, S. C., S. E. Rogers, Summerton, S. C., for defendants.

Before PARKER, Circuit Judge, and WARING and TIMMERMAN, District Judges.

PARKER, Circuit Judge.

This is a suit for a declaratory judgment and injunctive relief in which it is alleged that the schools and educational facilities provided for Negro children in School District No. 22 in Clarendon County, South Carolina, are inferior to those provided for white children in that district and that this amounts to a denial of the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Federal Constitution, and further that the segregation of Negro and white children in the public schools, required by Article 11, section 7 of the Constitution of South Carolina and section 5377 of the Code of Laws of that state,¹ is of itself violative of the equal protection clause of the Fourteenth Amendment. Plaintiffs are Negro children of school age who are entitled to attend

1. Article 11, section 7 of the Constitution of South Carolina is as follows: "Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race."

Section 5377 of the Code of Laws of South Carolina of 1942 is as follows: "It shall be unlawful for pupils of one race to attend the schools provided by boards of trustees for persons of another race."

the public schools in District No. 22 in Clarendon County, their parents and guardians. Defendants are the school officials who, as officers of the state, have control of the schools in the district. A court of three judges has been convened pursuant to the provisions of 28 U.S.C. §§ 2281 and 2284, the evidence offered by the parties has been heard and the case has been submitted upon the briefs and arguments of counsel.

At the beginning of the hearing the defendants admitted upon the record that "the educational facilities, equipment, curricula and opportunities afforded in School District No. 22 for colored pupils * * * are not substantially equal to those afforded for white pupils". The evidence offered in the case fully sustains this admission. The defendants contend, however, that the district is one of the rural school districts which has not kept pace with urban districts in providing educational facilities for the children of either race, and that the inequalities have resulted from limited resources and from the disposition of the school officials to spend the limited funds available "for the most immediate demands rather than in the light of the overall picture". They state that under the leadership of Governor Byrnes the Legislature of South Carolina has made provision for a bond issue of \$75,000,000 with a three per cent sales tax to support it for the purpose of equalizing educational opportunities and facilities throughout the state and of meeting the problem of providing equal educational opportunities for Negro children where this had not been done. They have offered evidence to show that this educational program is going forward and that under it the educational facilities in the district will be greatly improved for both races and that Negro children will be afforded educational facilities and opportunities in all respects equal to those afforded white children.

[1,2] There can be no question but that where separate schools are maintained for Negroes and whites, the educational facilities and opportunities afforded by them must be equal. The state may not

deny to any person within its jurisdiction the equal protection of the laws, says the Fourteenth Amendment; and this means that, when the state undertakes public education, it may not discriminate against an individual on account of race but must offer equal opportunity to all. As said by Chief Justice Hughes in *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 349, 58 S.Ct. 232, 236, 83 L.Ed. 208. "The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State." See also *Sweatt v. Painter*, 339 U.S. 629 70 S.Ct. 848, 94 L.Ed. 1114; *Corbin v. County School Board of Pulaski County, Cir.*, 177 F.2d 924; *Carter v. School Board of Arlington County, Va.*, 4 Cir., 182 F.2 531; *McKissick v. Carmichael*, 4 Cir., 187 F.2d 949. We think it clear, therefore, that plaintiffs are entitled to a declaration to the effect that the school facilities now afforded Negro children in District No. 22 are not equal to the facilities afforded white children in the district and to a mandatory injunction requiring that equal facilities be afforded them. How this shall be done is a matter for the school authorities and not for the court, so long as it is done in good faith and equality of facilities is afforded; but it must be done promptly and the court in addition to issuing an injunction to that effect will retain the cause upon its docket for further orders and will require that defendants file within six months a report showing the action that has been taken by them to carry out the order.

[3] Plaintiffs ask that, in addition to granting them relief on account of the inferiority of the educational facilities furnished them, we hold that segregation of the races in the public schools, as required by the Constitution and statutes of South Carolina, is of itself a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment, and that we enjoin the enforcement of the constitutional provision and statute requiring it and by our injunction require defendants to admit Negroes to schools to which white students

are admitted within the district. We think, however, that segregation of the races in the public schools, so long as equality of rights is preserved, is a matter of legislative policy for the several states, with which the federal courts are powerless to interfere.

[4] One of the great virtues of our constitutional system is that, while the federal government protects the fundamental rights of the individual, it leaves to the several states the solution of local problems. In a country with a great expanse of territory with peoples of widely differing customs and ideas, local self government in local matters is essential to the peace and happiness of the people in the several communities as well as to the strength and unity of the country as a whole. It is universally held, therefore, that each state shall determine for itself, subject to the observance of the fundamental rights and liberties guaranteed by the federal Constitution, how it shall exercise the police power, i. e. the power to legislate with respect to the safety, morals, health and general welfare. And in no field is this right of the several states more clearly recognized than in that of public education. As was well said by Mr. Justice Harlan, speaking for a unanimous court in *Cumming v. County Board of Education*, 175 U.S. 528, 545, 20 S.Ct. 197, 201, 44 L.Ed. 262, "while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."

It is equally well settled that there is no denial of the equal protection of the laws in segregating children in the schools for purposes of education, if the children of the different races are given equal facilities and opportunities. The leading case on the subject in the Supreme Court is *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138,

1140, 41 L.Ed. 256, which involved segregation in railroad trains, but in which the segregation there involved was referred to as being governed by the same principle as segregation in the schools. In that case the Court said: "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced."

Later in the opinion the Court said: "So far, then, as a conflict with the fourteenth amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. *In determining the question of reasonableness, it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order.*" (Italics supplied.)

Directly in point and absolutely controlling upon us so long as it stands unreversed by the Supreme Court is *Gong Lum v. Rice*, 275 U.S. 78, 48 S.Ct. 91, 93, 72 L.Ed. 172, in which the complaint was that a child of Chinese parentage was excluded from a school maintained for white children under a segregation law and was permitted to enter only a school maintained for colored children. Although attempt is made to dis-

tinguish this case, it cannot be distinguished. The question as to the validity of segregation in the public schools on the ground of race was squarely raised, the Fourteenth Amendment was relied upon as forbidding segregation and the issue was squarely met by the Court. What was said by Chief Justice Taft speaking for a unanimous court, is determinative of the question before us. Said he:

"The case then reduces itself to the question whether a state can be said to afford to a child of Chinese ancestry, born in this country and a citizen of the United States, the equal protection of the laws, by giving her the opportunity for a common school education in a school which receives only colored children of the brown, yellow or black races.

"The right and power of the state to regulate the method of providing for the education of its youth at public expense is clear. * * *

"The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow, or black. Were this a new question, it would call for very full argument and consideration; but we think that it is the same question which has been many times decided to be within the constitutional power of the state Legislature to settle, without intervention of the federal courts under the federal Constitution. *Roberts v. City of Boston*, 5 Cush. (Mass.) 198, 206, 208, 209; *State ex rel. Barnes v. McCann*, 21 Ohio St. 198, 210; *People ex rel. King v. Gallagher*, 93 N.Y. 438; *People ex rel. Cisco v. School Board*, 161 N.Y. 598, 56 N.E. 81, 48 L.R.A. 113; *Ward v. Flood*, 48 Cal. 36; *Wysinger v. Crookshank*, 82 Cal. 588, 590, 23 P. 54; *Reynolds v. Board of Education*, 66 Kan. 672, 72 P. 274; *McMillan v. School Committee*, 107 N.C. 609, 12 S.E. 330, 10 L.R.A. 823; *Cory v. Carter*, 48 Ind. 327; *Lehew v. Brummell*, 103 Mo. 546, 15 S.W. 765, 11 L.R.A. 828; *Dameron v. Bayless*, 14 Ariz. 180, 126 P. 273; *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 342, 348, 355; *Bertonneau v. Board*, 3 Woods 177.

3 Fed.Cas. 294, [Case] No. 1,361; *Unite States v. Buntlin* (C.C.), 10 F. 730, 735 *Wong Him v. Callahan* (C.C.), 119 F. 38

"In *Plessy v. Ferguson*, 163 U.S. 537, 544, 545, 16 S.Ct. 1138, 1140, 41 L.Ed. 256 in upholding the validity under the Fourteenth Amendment of a statute of Louisiana requiring the separation of the white and colored races in railway coaches, a *most difficult question than this*, this court, speaking of permitted race separation, said:

"The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced."

* * * * *

"Most of the cases cited arose, it is true, over the establishment of separate schools as between white pupils and black pupils; but we cannot think that the question is any different, or that any different result can be reached, assuming the cases above cited to be rightly decided, where the issue is as between white pupils and the pupils of the yellow races. *The decision is within the discretion of the state in regulating its public schools, and does not conflict with the Fourteenth Amendment.*" (Italics supplied.)

Only a little over a year ago, the question was before the Court of Appeals of the District of Columbia in *Carr v. Corning*, 86 U.S.App.D.C. 173, 182 F.2d 14, 16, a case involving the validity of segregation within the District, and the whole matter was exhaustively explored in the light of history and the pertinent decisions in an able opinion by Judge Prettyman, who said:

"It is urged that the separation of the races is itself, apart from equality or inequality of treatment, forbidden by the Constitution. The question thus posed is whether the Constitution lifted this problem out of the hands of all legislatures and settled it. We do not think it did. Since the beginning of human history, no circumstance has given rise to more difficult and delicate problems than has the coexist-

ence of different races in the same area. Centuries of bitter experience in all parts of the world have proved that the problem is insoluble by force of any sort. The same history shows that it is soluble by the patient processes of community experience. Such problems lie naturally in the field of legislation, a method susceptible of experimentation, of development, of adjustment to the current necessities in a variety of community circumstance. We do not believe that the makers of the first ten Amendments in 1789 or of the Fourteenth Amendment in 1866 meant to foreclose legislative treatment of the problem in this country.

"This is not to decry efforts to reach that state of common existence which is the obvious highest good in our concept of civilization. It is merely to say that the social and economic interrelationship of two races living together is a legislative problem, as yet not solved, and is not a problem solved fully, finally and unequivocally by a fiat enacted many years ago. We must remember that on this particular point we are interpreting a constitution and not enacting a statute.

"We are not unmindful of the debates which occurred in Congress relative to the Civil Rights Act of April 9, 1866, the Fourteenth Amendment, and the Civil Rights Act of March 1, 1875. But the actions of Congress, the discussion in the Civil Rights cases, and the fact that in 1862, 1864, 1866 and 1874 Congress, as we shall point out in a moment, enacted legislation which specifically provided for separation of the races in the schools of the District of Columbia, conclusively support our view of the Amendment and its effect.

"The Supreme Court has consistently held that if there be an 'equality of the privileges which the laws give to the separated groups', the races may be separated. That is to say that constitutional invalidity does not arise from the mere fact of separation but may arise from an inequality

of treatment. Other courts have long held to the same effect."

It should be borne in mind that in the above cases the courts have not been dealing with hypothetical situations or mere theory, but with situations which have actually developed in the relationship of the races throughout the country. Segregation of the races in the public schools has not been confined to South Carolina or even to the South but prevails in many other states where Negroes are present in large numbers. Even when not required by law, it is customary in many places. Congress has provided for it by federal statute in the District of Columbia; and seventeen of the states have statutes or constitutional provisions requiring it. They are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.² And the validity of legislatively requiring segregation in the schools has been upheld wherever the question has been raised. See *Wong Him v. Callahan*, C. C., 119 F. 381; *United States v. Buntin*, C.C., 10 F. 730; *Bertonneau v. Board of Directors*, 3 Fed.Cas. 294, No. 1,361; *Dameron v. Bayless*, 14 Ariz. 180, 126 P. 273; *Maddox v. Neal*, 45 Ark. 121, 55 Am.Rep. 540; *Ward v. Flood*, 48 Cal. 36, 17 Am. Rep. 405; *Cory v. Carter*, 48 Ind. 327, 17 Am.Rep. 738; *Graham v. Board of Education*, 153 Kan. 840, 114 P.2d 313; *Richardson v. Board of Education*, 72 Kan. 629, 84 P. 538; *Reynolds v. Board of Education*, 66 Kan. 672, 72 P. 274; *Chrisman v. Mayor of City of Brookhaven*, 70 Miss. 477, 12 So. 458; *Leflew v. Brummell*, 103 Mo. 546, 15 S.W. 765, 11 L.R.A. 828, 23 Am.St.Rep. 895; *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 342, 8 Am.Rep. 713; *People ex rel. Cisco v. School Board*, 161 N.Y. 598, 56 N.E. 81, 48 L.R.A. 113; *People v. Gallagher*, 93 N.Y. 438, 45 Am.Rep. 232; *McMillan v. School Committee*, 107 N.C. 609, 12 S.E. 330, 10 L.R.A. 823; *State ex rel. Garnes v. McCann*, 21 Ohio St. 198; *Board of*

2. Statistical Summary of Education, 1947-48, "Biennial Survey of Education in the United States, 1940-48", ch. 1, pp. 8, 40

(Federal Security Agency, Office of Education).

Education v. Board of Com'rs, 14 Okl. 322, 78 P. 455; *Martin v. Board of Education*, 42 W.Va. 514, 26 S.E. 348.³ No cases have been cited to us holding that such legislation is violative of the Fourteenth Amendment. We know of none, and diligent search of the authorities has failed to reveal any.

Plaintiffs rely upon expressions contained in opinions relating to professional education such as *Sweatt v. Painter*, 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114, *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149, and *McKissick v. Carmichael*, 4 Cir., 187 F.2d 949, where equality of opportunity was not afforded. *Sweatt v. Painter*, however, instead of helping them, emphasizes that the separate but equal doctrine of *Plessy v. Ferguson*, has not been overruled, since the Supreme Court, although urged to overrule it, expressly refused to do so and based its decision on the ground that the educational facilities offered Negro law students in that case were not equal to those offered white students. The decision in *McKissick v. Carmichael*, was based upon the same ground. The case of *McLaurin v. Oklahoma State Regents*, involved humiliating and embarrassing treatment of a Negro graduate student to which no one should have been required to submit. Nothing of the sort is involved here.

The problem of segregation as applied to graduate and professional education is essentially different from that involved in segregation in education at the lower levels. In the graduate and professional schools the problem is one of affording equal educational facilities to persons sui juris and of mature personality. Because of the great expense of such education and the importance of the professional contacts established while carrying on the educational process, it is difficult for the state to maintain segregated schools for Negroes in this field which will afford them opportunities for education and professional advancement equal to those afforded by the graduate and professional schools main-

tained for white persons. What the courts have said, and all they have said in the cases upon which plaintiffs rely is that notwithstanding these difficulties, the opportunity afforded the Negro student must be equal to that afforded the white student and that the schools established for furnishing this instruction to white persons must be opened to Negroes if this is necessary to give them the equal opportunity which the Constitution requires.

The problem of segregation at the common school level is a very different one. At this level, as good education can be afforded in Negro schools as in white schools and the thought of establishing professional contacts does not enter into the picture. Moreover, education at this level is not a matter of voluntary choice on the part of the student but of compulsion by the state. The student is taken from the control of the family during school hours by compulsion of law and placed in control of the school, where he must associate with his fellow students. The law thus provides that the school shall supplement the work of the parent in the training of the child and in doing so it is entering a delicate field and one fraught with tensions and difficulties. In formulating educational policy at the common school level, therefore, the law must take account, not merely of the matter of affording instruction to the student, but also of the wishes of the parent as to the upbringing of the child and his associates in the formative period of childhood and adolescence. If public education is to have the support of the people through their legislatures, it must not go contrary to what they deem for the best interests of their children.

There is testimony to the effect that mixed schools will give better education and a better understanding of the community in which the child is to live than segregated schools. There is testimony, on the other hand, that mixed schools will result in racial friction and tension and that the only practical way of conducting

3. See also *Roberts v. City of Boston*, 5 Cush., Mass., 198, decided prior to the Fourteenth Amendment.

public education in South Carolina is with segregated schools. The questions thus presented are not questions of constitutional right but of legislative policy, which must be formulated, not in vacuo or with doctrinaire disregard of existing conditions, but in realistic approach to the situations to which it is to be applied. In some states, the legislatures may well decide that segregation in public schools should be abolished, in others that it should be maintained—all depending upon the relationships existing between the races and the tensions likely to be produced by an attempt to educate the children of the two races together in the same schools. The federal courts would be going far outside their constitutional function were they to attempt to prescribe educational policies for the states in such matters, however desirable such policies might be in the opinion of some sociologists or educators. For the federal courts to do so would result, not only in interference with local affairs by an agency of the federal government, but also in the substitution of the judicial for the legislative process in what is essentially a legislative matter.

The public schools are facilities provided and paid for by the states. The state's regulation of the facilities which it furnishes is not to be interfered with unless constitutional rights are clearly infringed. There is nothing in the Constitution that requires that the state grant to all members of the public a common right to use every facility that it affords. Grants in aid of education or for the support of the indigent may properly be made upon an individual basis if no discrimination is practiced; and, if the family, which is the racial unit, may be considered in these, it may be con-

sidered also in providing public schools. The equal protection of the laws does not mean that the child must be treated as the property of the state and the wishes of his family as to his upbringing be disregarded. The classification of children for the purpose of education in separate schools has a basis grounded in reason and experience; and, if equal facilities are afforded, it cannot be condemned as discriminatory for, as said by Mr. Justice Reed in *New York Rapid Transit Corp. v. City of New York*, 303 U.S. 573, 578, 58 S.Ct. 721, 724, 82 L.Ed. 1024: "It has long been the law under the Fourteenth Amendment that 'a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it.'"⁴

We are cited to cases having relation to zoning ordinances, restrictive covenants in deeds and segregation in public conveyances. It is clear, however, that nothing said in these cases would justify our disregarding the great volume of authority relating directly to education in the public schools, which involves not transient contacts, but associations which affect the interests of the home and the wishes of the people with regard to the upbringing of their children. As Chief Justice Taft pointed out in *Gong Lum v. Rice*, supra [275 U.S. 78, 48 S.Ct. 93], "a more difficult" question is presented by segregation in public conveyances than by segregation in the schools.

[5,6] We conclude, therefore, that if equal facilities are offered, segregation of the races in the public schools as prescribed by the Constitution and laws of South Carolina is not of itself violative of the

4. See also, *Rast v. Van Deman & Lewis Co.*, 240 U.S. 342, 337, 30 S.Ct. 370, 60 L.Ed. 670; *Borden's Farm Products Co. v. Baldwin*, 203 U.S. 104, 200, 53 S.Ct. 187, 70 L.Ed. 231; *Metropolitan Casualty Ins. Co. v. Brownell*, 204 U.S. 580, 681, 53 S.Ct. 538, 70 L.Ed. 1070; *State Board of Tax Com'rs v. Jackson*, 283 U.S. 527, 537, 51 S.Ct. 540, 75 L.Ed. 1213; *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S.Ct. 337, 53 L.Ed. 300; *Alabama State Federation of Labor v. McDory*, 325 U.S. 450, 465, 63

S.Ct. 1384, 80 L.Ed. 1725; *Asbury Hospital v. Cass County, N.D.*, 328 U.S. 207, 215, 60 S.Ct. 61, 60 L.Ed. 6; *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 405, 509, 57 S.Ct. 808, 81 L.Ed. 1245; *South Carolina Power Co. v. South Carolina Tax Com'n*, 4 Cir., 52 F.2d 515, 518; *United States v. Carolene Products Co.*, 304 U.S. 144, 152, 58 S.Ct. 779, 82 L.Ed. 1234; *Bowles v. American Brewery*, 4 Cir., 146 F.2d 842, 847; *White Packing Co. v. Robertson*, 4 Cir., 80 F.2d 775, 779.

Fourteenth Amendment. We think that this conclusion is supported by overwhelming authority which we are not at liberty to disregard on the basis of theories advanced by a few educators and sociologists. Even if we felt at liberty to disregard other authorities, we may not ignore the unreversed decisions of the Supreme Court of the United States which are squarely in point and conclusive of the question before us. As said by the Court of Appeals of the Fourth Circuit in *Boyer v. Garrett*, 183 F.2d 582, a case involving segregation in a public playground, in which equality of treatment was admitted and segregation was attacked as being per se violative of the Fourteenth Amendment: "The contention of plaintiffs is that, notwithstanding this equality of treatment, the rule providing for segregation is violative of the provisions of the federal Constitution. The District Court dismissed the complaint on the authority of *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256; and the principal argument made on appeal is that the authority of *Plessy v. Ferguson* has been so weakened by subsequent decisions that we should no longer consider it as binding. We do not think, however, that we are at liberty thus to disregard a decision of the Supreme Court which that court has not seen fit to overrule and which it expressly refrained from reexamining, although urged to do so, in the very recent case of *Sweatt v. Painter* [339 U.S. 629], 70 S.Ct. 848 [94 L.Ed. 1114]. It is for the Supreme Court, not us, to overrule its decisions or to hold them outmoded."

To this we may add that, when seventeen states and the Congress of the United States have for more than three-quarters of a century required segregation of the races in the public schools, and when this has received the approval of the leading appellate courts of the country including the unanimous approval of the Supreme Court of the United States at a time when that court included Chief Justice Taft and Justices Stone, Holmes and Brandeis, it is a late day to say that such segregation is violative of fundamental constitutional rights. It is hardly reasonable to suppose

that legislative bodies over so wide a territory, including the Congress of the United States, and great judges of high court, have knowingly defied the Constitution for so long a period or that they have acted in ignorance of the meaning of its provisions. The constitutional principle is the same now that it has been throughout this period; and if conditions have changed so that segregation is no longer wise, this is a matter for the legislatures and not for the courts. The members of the judiciary have no more right to read their ideas of sociology into the Constitution than their ideas of economics.

[7] It is argued that, because the school facilities furnished Negroes in District No. 22 are inferior to those furnished white persons, we should enjoin segregation rather than direct the equalizing of conditions. In as much as we think that the law requiring segregation is valid, however, and that the inequality suffered by plaintiffs results, not from the law, but from the way it has been administered, we think that our injunction should be directed to removing the inequalities resulting from administration within the framework of the law rather than to nullifying the law itself. As a court of equity, we should exercise our power to assure to plaintiffs the equality of treatment to which they are entitled with due regard to the legislative policy of the state. In directing that the school facilities afforded Negroes within the district be equalized promptly with those afforded white persons, we are giving plaintiffs all the relief that they can reasonably ask and the relief that is ordinarily granted in cases of this sort. See *Carter v. County School Board of Arlington County, Virginia*, 4 Cir., 182 F.2d 531. The court should not use its power to abolish segregation in a state where it is required by law if the equality demanded by the Constitution can be attained otherwise. This much is demanded by the spirit of comity which must prevail in the relationship between the agencies of the federal government and the states if our constitutional system is to endure.

Decree will be entered finding that the constitutional and statutory provisions re-

quiring segregation in the public schools are not of themselves violative of the Fourteenth Amendment, but that defendants have denied to plaintiffs rights guaranteed by that amendment in failing to furnish for Negroes in School District 22 educational facilities and opportunities equal to those furnished white persons, and in-junction will issue directing defendants promptly to furnish Negroes within the district educational facilities and opportunities equal to those furnished white persons and to report to the court within six months as to the action that has been taken by them to effectuate the court's decree.

Injunction to abolish segregation denied.

Injunction to equalize educational facilities granted.

WARING, District Judge (dissenting).

This case has been brought for the express and declared purpose of determining the right of the State of South Carolina, in its public schools, to practice segregation according to race.

The plaintiffs are all residents of Clarendon County, South Carolina which is situated within the Eastern District of South Carolina and within the jurisdiction of this court. The plaintiffs consist of minors and adults there being forty-six minors who are qualified to attend and are attending the public schools in School District 22 of Clarendon County; and twenty adults who are taxpayers and are either guardians or parents of the minor plaintiffs. The defendants are members of the Board of Trustees of School District 22 and other officials of the educational system of Clarendon County including the superintendent of education. They are the parties in charge of the various schools which are situated within the aforesaid school district and which are affected by the matters set forth in this cause.

The plaintiffs allege that they are discriminated against by the defendants under color of the Constitution and laws of the State of South Carolina whereby they are

denied equal educational facilities and opportunities and that this denial is based upon difference in race. And they show that the school system of this particular school district and county (following the general pattern that it is admitted obtains in the State of South Carolina) sets up two classes of schools; one for people said to belong to the white race and the other for people of other races but primarily for those said to belong to the Negro race or of mixed races and either wholly, partially, or faintly alleged to be of African or Negro descent. These plaintiffs bring this action for the enforcement of the rights to which they claim they are entitled and on behalf of many others who are in like plight and condition and the suit is denominated a class suit for the purpose of abrogation of what is claimed to be the enforcement of unfair and discriminatory laws by the defendants. Plaintiffs claim that they are entitled to bring this case and that this court has jurisdiction under the Fourteenth Amendment of the Constitution of the United States and of a number of statutes of the United States, commonly referred to as civil rights statutes.¹ The plaintiffs demand relief under the above referred to sections of the laws of the United States by way of a declaratory judgment and permanent injunction.

It is alleged that the defendants are acting under the authority granted them by the Constitution and laws of the State of South Carolina and that all of these are in contravention of the Constitution and laws of the United States. The particular portions of the laws of South Carolina are as follows:

Article XI, Section 5 is as follows: "Free public schools.—The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years * * *."

Article XI, Section 7 is as follows: "Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be

1. Fourteenth Amendment of the Constitution of the United States, Section 1;

Title 8 U.S.C.A. §§ 41, 43; Title 28, U.S.C.A. § 1343.

permitted to attend a school provided for children of the other race."

Section 5377 of the Code of Laws of South Carolina is as follows: "It shall be unlawful for pupils of one race to attend the schools provided by boards of trustees for persons of another race."

It is further shown that the defendants are acting under the authority of the Constitution and laws of the State of South Carolina providing for the creation of various school districts,² and they have strictly separated and segregated the school facilities, both elementary and high school, according to race. There are, in said school district, three schools which are used exclusively by Negroes: to wit, Rambay Elementary School, Liberty Hill Elementary School, and Scotts Branch Union (a combination of elementary and high school). There are in the same school district, two schools maintained for whites, namely, Summerton Elementary School and Summerton High School. The last named serves some of the other school districts in Clarendon County as well as No. 22.

It appears that the plaintiffs filed a petition with the defendants requesting that the defendants cease discrimination against the Negro children of public school age; and the situation complained of not having been remedied or changed, the plaintiffs now ask this court to require the defendants to grant them their rights guaranteed under the Fourteenth Amendment of the Constitution of the United States and they appeal to the equitable power of this court for declaratory and injunctive relief alleging that they are suffering irreparable injuries and that they have no plain adequate or complete remedy to redress the wrongs and illegal acts complained of other than this suit. And they further point out that large numbers of people and persons are and will be affected by the decision of this court in adjudicating and clarifying the rights of Negroes to obtain education in the public school system of the State of South Carolina without discrimination and

denial of equal facilities on account of their race.

The defendants appear and by way of answer deny the allegations of the complaint as to discrimination and inequality and allege that not only are they acting within the laws of the State in enforcing segregation but that all facilities afforded the pupils of different races are adequate and equal and that there is no inequality or discrimination practiced against these plaintiffs or any others by reason of race or color. And they allege that the facilities and opportunities furnished to the colored children are substantially the same as those provided for the white children. And they further base their defense upon the statement that the Constitutional and statutory provisions under attack in this case, that is to say, the provisions requiring separate schools because of race, are a reasonable exercise of the State's police power and that all of the same are valid under the powers possessed by the State of South Carolina and the Constitution of the United States and they deny that the same can be held to be unconstitutional by this Court.

The issues being so drawn and calling for a judgment by the United States Court which would require the issuance of an injunction against State and County officials, it became apparent that it would be necessary that the case be heard in accordance with the statute applicable to cases of this type requiring the calling of a three-judge court.³ Such a court convened and the case was set for a hearing on May 28, 1951.

The case came on for a trial upon the issues as presented in the complaint and answer. But upon the call of the case, defendants' counsel announced that they wished to make a statement on behalf of the defendants making certain admissions and praying that the Court make a finding as to inequalities in respect to buildings, equipment, facilities, curricula and other aspects of the schools provided for children in School District 22 in Clarendon County

2. Constitution of South Carolina, Article XI, Section 5; Code of Laws, 5301, 5310, 5328, 5404 and 5405; Code of Laws of

South Carolina, Sections 5303, 5300, 5313, 5400.

3. Title 28, U.S.C.A. §§ 2281-2284.

and giving the public authorities time to formulate plans for ending such inequalities. In this statement defendants claim that they never had intended to discriminate against any of the pupils and although they had filed an answer to the complaint, some five months ago, denying inequalities they now admit that they had found some; but rely upon the fact that subsequent to the institution of this suit, James F. Byrnes, the Governor of South Carolina, had stated in his inaugural address that the State must take steps to provide money for improving educational facilities and that thereafter, the Legislature had adopted certain legislation. They stated that they hoped that in time they would obtain money as a result of the foregoing and improve the school situation.

This statement was allowed to be filed and considered as an amendment to the answer.

By this maneuver, the defendants have endeavored to induce this Court to avoid the primary purpose of the suit. And if the Court should follow this suggestion and fail to meet the issues raised by merely considering this case in the light of another "separate but equal" case, the entire purpose and reason for the institution of the case and the convening of a three-judge court would be voided. The 66 plaintiffs in this cause have brought this suit at what must have cost much in effort and financial expenditures. They are here represented by 6 attorneys, all, save one, practicing lawyers from without the State of South Carolina and coming here from a considerable distance. The plaintiffs have brought a large number of witnesses exclusive of themselves. As a matter of fact, they called and examined 11 witnesses. They said that they had a number more coming who did not arrive in time owing to the shortening of the proceedings and they also stated that they had on hand and had contemplated calling a large number of other witnesses but this became unnecessary by reason of the foregoing admissions by defendants. It certainly appears that large expenses must have been caused by the institution of this case and great efforts expended in gathering data, making a

study of the issues involved, interviewing and bringing numerous witnesses, some of whom are foremost scientists in America. And in addition to all of this, these 66 plaintiffs have not merely expended their time and money in order to test this important Constitutional question, but they have shown unexampled courage in bringing and presenting this cause at their own expense in the face of the long established and age-old pattern of the way of life which the State of South Carolina has adopted and practiced and lived in since and as a result of the institution of human slavery.

If a case of this magnitude can be turned aside and a court refused to hear these basic issues by the mere device of admission that some buildings, blackboards, lighting fixtures and toilet facilities are unequal but that they may be remedied by the spending of a few dollars, then, indeed people in the plight in which these plaintiffs are, have no adequate remedy or forum in which to air their wrongs. If this method of judicial evasion be adopted, these very infant plaintiffs now pupils in Clarendon County will probably be bringing suits for their children and grandchildren decades or rather generations hence in an effort to get for their descendants what are today denied to them. If they are entitled to any rights as American citizens, they are entitled to have these rights now and not in the future. And no excuse can be made to deny them these rights which are theirs under the Constitution and laws of America by the use of the false doctrine and patter called "separate but equal" and it is the duty of the Court to meet these issues simply and factually and without fear, sophistry and evasion. If this be the measure of justice to be meted out to them, then, indeed, hundreds, nay thousands, of cases will have to be brought and in each case thousands of dollars will have to be spent for the employment of legal talent and scientific testimony and then the cases will be turned aside, postponed or eliminated by devices such as this.

We should be unwilling to straddle or avoid this issue and if the suggestion made by these defendants is to be adopted as the

type of justice to be meted out by this Court, then I want no part of it.

And so we must and do face, without evasion or equivocation, the question as to whether segregation in education in our schools is legal or whether it cannot exist under our American system as particularly enunciated in the Fourteenth Amendment to the Constitution of the United States.

Before the American Civil War, the institution of human slavery had been adopted and was approved in this country. Slavery was nothing new in the world. From the dawn of history we see aggressors enslaving weak and less fortunate neighbors. Back through the days of early civilization man practiced slavery. We read of it in Biblical days; we read of it in the Greek City States and in the great Roman Empire. Throughout medieval Europe, forms of slavery existed and it was widely practiced in Asia Minor and the Eastern countries and perhaps reached its worst form in Nazi Germany. Class and caste have, unfortunately, existed through the ages. But, in time, mankind, through evolution and progress, through ethical and religious concepts, through the study of the teachings of the great philosophers and the great religious teachers, including especially the founder of Christianity—mankind began to revolt against the enslavement of body, mind and soul of one human being by another. And so there came about a great awakening. The British who had indulged in the slave trade, awakened to the fact that it was immoral and against the right thinking ideology of the Christian world. And in this country, also, came about a moral awakening. Unfortunately, this had not been sufficiently advanced at the time of the adoption of the American Constitution for the institution of slavery to be prohibited. But there was a struggle and the better thinking leaders in our Constitutional Convention endeavored to prohibit slavery but unfortunately compromised the issue on the insistent demands of those who were engaged in the slave trade and the purchase and use of slaves. And so as time went on, slavery was perpetuated and eventually became a part of the life and culture of certain of the States of this Union although

the rest of the world looked on with shame and abhorrence.

As was so well said, this country could not continue to exist one-half slave and one-half free and long years of war were entered into before the nation was willing to eradicate this system which was, itself, a denial of the brave and fine statements of the Declaration of Independence and a denial of freedom as envisioned and advocated by our Founders.

The United States then adopted the 13th, 14th and 15th Amendments and it cannot be denied that the basic reason for all of these Amendments to the Constitution was to wipe out completely the institution of slavery and to declare that all citizens in this country should be considered as free, equal and entitled to all of the provisions of citizenship.

The Fourteenth Amendment to the Constitution of the United States is as follows: "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It seems to me that it is unnecessary to pore through voluminous arguments and opinions to ascertain what the foregoing means. And while it is true that we have had hundreds, perhaps thousands, of legal opinions outlining and defining the various effects and overtones on our laws and life brought about by the adoption of this Amendment, one of ordinary ability and understanding of the English language will have no trouble in knowing that when this Amendment was adopted, it was intended to do away with discrimination between our citizens.

The Amendment refers to *all* persons. There is nothing in there that attempts to separate, segregate or discriminate against any persons because of their being of

European, Asian or African ancestry. And the plain intentment is that all of these persons are citizens. And then it is provided that no State shall make or enforce any law which shall abridge the privileges of citizens nor shall any state deny "to any person within its jurisdiction the equal protection of the laws".

The Amendment was first proposed in 1866 just about a year after the end of the American Civil War and the surrender of the Confederate States government. Within two years, the Amendment was adopted and became part of the Constitution of the United States. It cannot be gainsaid that the Amendment was proposed and adopted wholly and entirely as a result of the great conflict between freedom and slavery. This will be amply substantiated by an examination and appreciation of the proposal and discussion and Congressional debates (see Flack on Adoption of the 14th Amendment) and so it is undeniably true that the three great Amendments were adopted to eliminate not only slavery, itself, but all idea of discrimination and difference between American citizens.

Let us now come to consider whether the Constitution and Laws of the State of South Carolina which we have heretofore quoted are in conflict with the true meaning and intentment of this Fourteenth Amendment. The whole discussion of race and ancestry has been intermingled with sophistry and prejudice. What possible definition can be found for the so-called white race, Negro race or other races? Who is to decide and what is the test? For years, there was much talk of blood and taint of blood. Science tells us that there are but four kinds of blood: A, B, AB and O and these are found in Europeans, Asiatics, Africans, Americans and others. And so we need not further consider the irresponsible and baseless references to preservation of "Caucasian blood". So then, what test are we going to use in opening our school doors and labeling them "white" and "Negro"? The law of South Carolina considers a person of one-eighth African ancestry to be a Negro. Why this proportion? Is it based upon any reason: anthropological, historical or ethical? And how are the trustees

to know who are "whites" and who are "Negroes"? If it is dangerous and evil for a white child to be associated with another child, one of whose great-grandparents was of African descent, is it not equally dangerous for one with a one-sixteenth percentage? And if the State has decided that there is danger in contact between the whites and Negroes, isn't it requisite and proper that the State furnish a series of schools one for each of these percentages? If the idea is perfect racial equality in educational systems, why should children of pure African descent be brought in contact with children of one-half, one-fourth, or one-eighth such ancestry? To ask these questions is sufficient answer to them. The whole thing is unreasonable, unscientific and based upon unadulterated prejudice. We see the results of all of this warped thinking in the poor under-privileged and frightened attitude of so many of the Negroes in the southern states; and in the sadistic insistence of the "white supremacists" in declaring that their will must be imposed irrespective of rights of other citizens. This claim of "white supremacy", while fantastic and without foundation, is really believed by them for we have had repeated declarations from leading politicians and governors of this state and other states declaring that "white supremacy" will be endangered by the abolition of segregation. There are present threats, including those of the present Governor of this state, going to the extent of saying that all public education may be abandoned if the courts should grant true equality in educational facilities.

Although some 73 years have passed since the adoption of the Fourteenth Amendment and although it is clearly apparent that its chief purpose, (perhaps we may say its only real purpose) was to remove from Negroes the stigma and status of slavery and to confer upon them full rights as citizens, nevertheless, there has been a long and arduous course of litigation through the years. With some setbacks here and there, the courts have generally and progressively recognized the true meaning of the Fourteenth Amendment and have, from time to time, stricken down the attempts

made by state governments (almost entirely those of the former Confederate states) to restrict the Amendment and to keep Negroes in a different classification so far as their rights and privileges as citizens are concerned. A number of cases have reached the Supreme Court of the United States wherein it became necessary for that tribunal to insist that Negroes be treated as citizens in the performance of jury duty. See *Strauder v. West Virginia*⁴, where the Court says 100 U.S. at page 307, 25 L.Ed. 664; " * * * What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."

Many subsequent cases have followed and confirmed the right of Negroes to be treated as equals in all jury and grand jury service in the states.

The Supreme Court has stricken down from time to time statutes providing for imprisonment for violation of contracts. These are known as peonage cases and were in regard to statutes primarily aimed at keeping the Negro "in his place".⁵

In the field of transportation the court has now, in effect declared that common carriers engaged in interstate travel must not and cannot segregate and discriminate against passengers by reason of their race or color.⁶

Frequent and repeated instances of prejudice in criminal cases because of the brutal treatment of defendants because of their color have been passed upon in a large number of cases.⁷

Discrimination by segregation of housing facilities and attempts to control the same by covenants have also been outlawed.⁸

In the field of labor employment and particularly the relation of labor unions to the racial problem, discrimination has again been forbidden.⁹

Perhaps the most serious battle for equality of rights has been in the field of exercise of suffrage. For years, certain of the southern states have attempted to prevent the Negro from taking part in elections by various devices. It is unnecessary to enumerate the long list of cases, but from time to time courts have stricken down all of these various devices classed as the "grandfather clause", educational tests and white private clubs.¹⁰

4. 100 U.S. 303, 25 L.Ed. 664.

5. Peonage: *Bailey v. Alabama*, 219 U.S. 219, 31 S.Ct. 145, 55 L.Ed. 101; *U. S. v. Reynolds*, 235 U.S. 133, 35 S.Ct. 80, 50 L.Ed. 102.

6. Transportation: *Mitchell v. U. S.*, 313 U.S. 80, 61 S.Ct. 873, 83 L.Ed. 1201; *Morgan v. Virginia*, 328 U.S. 373, 60 S.Ct. 1050, 90 L.Ed. 1317; *Henderson v. U. S.*, 339 U.S. 810, 70 S.Ct. 813, 94 L.Ed. 1302; *Chance v. Lambeth*, 4 Cir., 180 F.2d 870, certiorari denied *Atlantic Coast Line R. Co. v. Chance*, 341 U.S. 941, 71 S.Ct. 1001, May 29, 1951.

7. Criminals: *Brown v. Mississippi*, 207 U.S. 278, 50 S.Ct. 401, 80 L.Ed. 682;

Chambers v. Florida, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716; *Shepherd v. Florida*, 341 U.S. 50, 71 S.Ct. 519.

8. Housing: *Duchanan v. Warley*, 245 U.S. 80, 38 S.Ct. 10, 62 L.Ed. 140; *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 830, 92 L.Ed. 1101.

9. Labor: *Steele v. Louisville & N. R. R. Co.*, 323 U.S. 102, 65 S.Ct. 220, 80 L.Ed. 173; *Tunstall v. Brotherhood of Locomotive Firemen*, 323 U.S. 210, 65 S.Ct. 235, 80 L.Ed. 187.

10. Suffrage: *Guinn v. U. S.*, 238 U.S. 317, 35 S.Ct. 920, 50 L.Ed. 1340; *Nixon v. Herndon*, 273 U.S. 530, 47 S.Ct. 410, 71

The foregoing are but a few brief references to some of the major landmarks in the fight by Negroes for equality. We now come to the more specific question, namely, the field of education. The question of the right of the state to practice segregation by race in certain educational facilities has only recently been tested in the courts. The cases of *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208 and *Sipuel v. Board of Regents*, 332 U.S. 631, 68 S.Ct. 299, 92 L.Ed. 247, decided that Negroes were entitled to the same type of legal education that whites were given. It was further decided that the equal facilities must be furnished without delay or as was said in the *Sipuel* case, the state must provide for equality of education for Negroes "as soon as it does for applicants of any other group". But still we have not reached the exact question that is posed in the instant case.

We now come to the cases that, in my opinion, definitely and conclusively establish the doctrine that separation and segregation according to race is a violation of the Fourteenth Amendment. I, of course, refer to the cases of *Sweatt v. Painter*, 339 U.S. 629, 70 S.Ct. 848, 94 L. Ed. 1114, and *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 70 S.Ct. 851, 94 L. Ed. 1149. These cases have been followed in a number of lower court decisions so that there is no longer any question as to the rights of Negroes to enjoy all the rights and facilities afforded by the law schools of the States of Virginia, Louisiana, Delaware, North Carolina and Kentucky. So there is no longer any basis for a state to claim the power to separate according to race in graduate schools, universities and colleges.

The real rock on which the defendants base their case is a decision of the Su-

preme Court of the United States in the case of *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256. This case arose in Louisiana and was heard on appeal in 1895. The case related to the power of the State of Louisiana to require separate railroad cars for white and colored passengers and the Court sustained the State's action. Much discussion has followed this case and the reasoning and decision has been severely criticized for many years. And the famous dissenting opinion by Mr. Justice Harlan has been quoted throughout the years as a true declaration of the meaning of the Fourteenth Amendment and of the spirit of the American Constitution and the American way of life. It has also been frequently pointed out that when that decision was made, practically all the persons of the colored or Negro race had either been born slaves or were the children of slaves and that as yet due to their circumstances and surroundings and the condition in which they had been kept by their former masters, they were hardly looked upon as equals or as American citizens. The reasoning of the prevailing opinion in the *Plessy* case stems almost completely from a decision by Chief Justice Shaw of Massachusetts¹¹, which decision was made many years before the Civil War and when, of course, the Fourteenth Amendment had not even been dreamed of.

But these arguments are beside the point in the present case. And we are not called upon to argue or discuss the validity of the *Plessy* case.

Let it be remembered that the *Plessy* case decided that separate railroad accommodations might be required by a state in intra-state transportation. How similar attempts relating to inter-state transportation have fared have been shown in the foregoing discussion and notes.¹² It has

L.Ed. 750; *Lane v. Wilson*, 307 U.S. 208, 60 S.Ct. 872, 83 L.Ed. 1281; *Smith v. Allwright*, 321 U.S. 649, 64 S.Ct. 757, 89 L.Ed. 957; *Elmore v. Rice*, D.C., 72 F. Supp. 510; 4 Cir., 103 F.2d 357; certiorari denied, 333 U.S. 875, 68 S.Ct. 605, 92 L.Ed. 1151; *Brown v. Baskin*, D.C.,

78 F.Supp. 933; *Brown v. Baskin*, D.C., 80 F.Supp. 1017; 4 Cir., 174 F.2d 301.

11. *Roberts v. City of Boston*, 5 Cush., Mass., 109.

12. See cases cited in Note 6.

been said and repeated here in argument that the Supreme Court has refused to review the Plessy case in the Sweatt, McLaurin and other cases and this has been pointed to as proof that the Supreme Court retains and approves the validity of Plessy. It is astonishing that such an argument should be presented or used in this or any other court. The Supreme Court in Sweatt and McLaurin was not considering railroad accommodations. It was considering education just as we are considering it here and the Supreme Court distinctly and unequivocally held that the attempt to separate the races in education was violative of the Fourteenth Amendment of the Constitution. Of course, the Supreme Court did not consider overruling Plessy. It was not considering railroad matters, had no arguments in regard to it, had no business or concern with railroad accommodations and should not have even been asked to refer to that case since it had no application or business in the consideration of an educational problem before the court. It seems to me that we have already spent too much time and wasted efforts in attempting to show any similarity between traveling in a railroad coach in the confines of a state and furnishing education to the future citizens of this country.

The instant case which relates to lower school education is based upon exactly the same reasoning followed in the Sweatt and McLaurin decisions. In the Sweatt case, it was clearly recognized that a law school for Negro students had been established and that the Texas courts had found that the privileges, advantages and opportunities offered were substantially equivalent to those offered to white students at the University of Texas. Apparently, the Negro school was adequately housed, staffed and offered full and complete legal education, but the Supreme Court clearly recognized that education does not alone consist of fine buildings, class room furniture and appliances but that included in education must be all the intangibles that come into play in preparing one for meeting life. As was so well said by the Court: " * * *

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Few students and no one who has practice law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned." [339 U.S. 629 70 S.Ct. 850.] And the Court quotes with approval from its opinion in *Shelley v. Kramer*, supra: " * * * Equal protection of the laws is not achieved through indiscriminate imposition of inequalities." The Court further points out that this right to a proper and equal education is a personal one and that an individual is entitled to the equal protection of the laws. And in closing, the Court, referring to certain cases cited, says: "In accordance with these cases, petitioner may claim his full constitutional right: legal education equivalent to that offered by the State to students of other races. Such education is not available to him in a separate law school as offered by the State."

In the companion case of *McLaurin v. Oklahoma State Regents*, McLaurin was a student who was allowed to attend the same classes, hear the same lectures, stand the same examinations and eat in the same cafeteria; but he sat in a marked off place and had a separate table assigned to him in the library and another one in the cafeteria. It was said with truth that these facilities were just as good as those afforded to white students. But the Supreme Court says that even though this be so:

"These restrictions were obviously imposed in order to comply, as nearly as could be, with the statutory requirements of Oklahoma. But they signify that the State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.

"Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need,

for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such inequalities cannot be sustained." [339 U. S. 637, 70 S.Ct. 853.]

The recent case of *McKissick v. Charnichael*, 4 Cir., 187 F.2d 949, 953, wherein the question of admission to the law school of the University of North Carolina was decided follows and amplifies the reasoning of the *Sweatt* and *McLaurin* cases. In the *McKissick* case, officials of the State of North Carolina took the position that they had adopted a fixed and continued purpose to establish and build up separate schools for equality in education and pointed with pride to the large advances that they had made. They showed many actual physical accomplishments and the establishment of a school which they claimed was an equal in many respects and superior in some respects to the school maintained for white students. The Court of Appeals for the 4th Circuit in this case, speaking through Judge Soper, meets this issue without fear or evasion and says: "These circumstances are worthy of consideration by any one who is responsible for the solution of a difficult racial problem; but they do not meet the complainants' case or overcome the deficiencies which it discloses. Indeed the defense seeks in part to avoid the charge of inequality by the paternal suggestion that it would be beneficial to the colored race in North Carolina as a whole, and to the individual plaintiffs in particular, if they would cooperate in promoting the policy adopted by the State rather than seek the best legal education which the State provides. The duty of the federal courts, however, is clear. We must give first place to the rights of the individual citizen, and when and where he seeks only equality of treatment before the law, his

suit must prevail. It is for him to decide in which direction his advantage lies."

In the instant case, the plaintiffs produced a large number of witnesses. It is significant that the defendants brought but two. These last two were not trained educators. One was an official of the Clarendon schools who said that the school system needed improvement and that the school officials were hopeful and expectant of obtaining money from State funds to improve all facilities. The other witness, significantly named Crow, has been recently employed by a commission just established which, it is proposed, will supervise educational facilities in the State and will handle monies if, as and when the same are received sometime in the future. Mr. Crow did not testify as an expert on education although he stated flatly that he believed in separation of the races and that he heard a number of other people say so, including some Negroes, but he was unable to mention any of their names. Mr. Crow explained what was likely and liable to happen under the 1951 State Educational Act to which frequent reference was made in argument on behalf of the defense.

It appears that the Governor of this state called upon the legislature to take action in regard to the dearth of educational facilities in South Carolina pointing out the low depth to which the state had sunk. As a result, an act of the legislature was adopted (this is a part of the General Appropriations Act adopted at the recent session of the legislature and referred to as the 1951 School Act). This Act provides for the appointment of a commission which is to generally supervise educational facilities and imposes sales taxes in order to raise money for educational purposes and authorizes the issuance of bonds not to exceed the sum of \$75,000,000, for the purpose of making grants to various counties and school districts to defray the cost of capital improvement in schools. The Commission is granted wide power to accept applications for and approve such grants as loans. It is given wide power as to what schools and school districts are

to receive monies and it is also provided, that from the taxes there are to be allocated funds to the various schools based upon the enrollment of pupils. Nowhere is it specifically provided that there shall be equality of treatment as between whites and Negroes in the school system. It is openly and frankly admitted by all parties that the present facilities are hopelessly disproportional and no one knows how much money would be required to bring the colored school system up to a parity with the white school system. The estimates as to the cost merely of equalization of physical facilities run anywhere from forty to eighty million dollars. Thus, the position of the defendants is that the rights applied for by the plaintiffs are to be denied now because the State of South Carolina intends (as evidenced by a general appropriations bill enacted by the legislature and a speech made by its Governor) to issue bonds, impose taxes, raise money and to do something about the inadequate schools in the future. There is no guarantee or assurance as to when the money will be available. As yet, no bonds have been printed or sold. No money is in the treasury. No plans have been drawn for school buildings or order issued for materials. No allocation has been made to the Clarendon school district or any other school districts and not even application blanks have, as yet, been printed. But according to Mr. Crow, the Clarendon authorities have requested him to send them blanks for this purpose if, as and when they come into being. Can we seriously consider this a bona-fide attempt to provide equal facilities for our school children?

On the other hand, the plaintiffs brought many witnesses, some of them of national reputation in various educational fields. It is unnecessary for me to review or analyze their testimony. But they who had made studies of education and its effect upon children, starting with the lowest grades and studying them up through and into high school, unequivocally testified that aside from inequality in housing appliances and equipment, the mere fact

of segregation, itself, had a deleterious and warping effect upon the minds of children. These witnesses testified as to their study and researches and their actual tests with children of varying ages and they showed that the humiliation and disgrace of being set aside and segregated as unfit to associate with others of different color had an evil and ineradicable effect upon the mental processes of our young which would remain with them and deform their view on life until and throughout their maturity. This applies to white as well as Negro children. These witnesses testified from actual study and tests in various parts of the country, including tests in the actual Clarendon School district under consideration. They showed beyond a doubt that the evils of segregation and color prejudice come from early training. And from their testimony as well as from common experience and knowledge and from our own reasoning, we must unavoidably come to the conclusion that racial prejudice is something that is acquired and that that acquiring is in early childhood. When do we get our first ideas of religion, nationality and the other basic ideologies? The vast number of individuals follow religious and political groups because of their childhood training. And it is difficult and nearly impossible to change and eradicate these early prejudices, however strong may be the appeal to reason. There is absolutely no reasonable explanation for racial prejudice. It is all caused by unreasoning emotional reactions and these are gained in early childhood. Let the little child's mind be poisoned by prejudice of this kind and it is practically impossible to ever remove these impressions however many years he may have of teaching by philosophers, religious leaders or patriotic citizens. If segregation is wrong then the place to stop it is in the first grade and not in graduate colleges.

From their testimony, it was clearly apparent, as it should be to any thoughtful person, irrespective of having such expert testimony, that segregation in educa-

tion can never produce equality and that it is an evil that must be eradicated. This case presents the matter clearly for adjudication and I am of the opinion that all of the legal guideposts, expert testimony, common sense and reason point unerringly to the conclusion that the system of segregation in education adopted and practiced in the State of South Carolina must go and must go now.

Segregation is per se inequality.

As heretofore shown, the courts of this land have stricken down discrimination in higher education and have declared unequivocally that segregation is not equality. But these decisions have pruned away only the noxious fruits. Here in this case, we are asked to strike its very root. Or rather, to change the metaphor, we are asked to strike at the cause of infection and not merely at the symptoms of disease. And if the courts of this land are to render justice under the laws without fear or favor, justice for all men and all kinds of men, the time to do it is now and the

place is in the elementary schools where our future citizens learn their first lesson to respect the dignity of the individual in a democracy.

To me the situation is clear and important, particularly at this time when our national leaders are called upon to show to the world that our democracy means what it says and that it is a true democracy and there is no under-cover suppression of the rights of any of our citizens because of the pigmentation of their skins. And I had hoped that this Court would take this view of the situation and make a clear cut declaration that the State of South Carolina should follow the intent and meaning of the Constitution of the United States and that it shall not abridge the privileges accorded to or deny equal protection of its laws to any of its citizens. But since the majority of this Court feel otherwise, and since I cannot concur with them or join in the proposed decree, this opinion is filed as a dissent.

OUR COMMUNITY: SEVEN CRITICAL PROBLEMS FACING US

By FRANCIS A. KORNEGAY
Executive Director
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Life without struggle is life loaded with stagnation. This refers to peoples all over the world. The freedoms that mankind have earned were born in the eternal furnace of struggle. Moreover, that freedom is permanent or static is deception of the first magnitude. Because growth is continuous — so is freedom. "The way to preserve freedom is to live it."¹ Gains made today may be stumbling blocks tomorrow. Inherent in freedom is the freedom of choice — the right to succeed and its attending right to fail; the right to do and the right not to do; the right to live and the right to die. It is the goal of society that mankind will always choose to do that which is right, honest, and just. But then Thomas Jefferson, in his immortal words embedded in the Declaration of Independence, so ably put it — "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness, and to secure these rights, governments are instituted among men deriving their just power from the consent of the governed." May I quote again, "The 'Negro Problem' is the most conspicuous area for dramatic new advance."²

It is about these rights that I share with you some of my concerns and projections. It is because of the denial of these rights to some American citizens, although more than 186 years have passed since the utterance of these pronouncements, that I list for you Seven Critical Problems facing us:

(The way in which the problems are discussed, today, in no way indicates their severity.)

PROBLEM **1** MIGRATION WILL REMAIN

"The migration of people is not peculiar to Negroes. However, due to unbearable economic pressures, and ma-

¹Goals For Americans, p. 1; Prentice-Hall, Inc., 1960.

²Ibid., p. 42.

lignant social forces in southern states, the movement of Negroes across state lines is higher than that any other racial group."³ During the last decade, the south lost 1,445,000 Negroes who settled in the Northeast, North Central Region and in the West. According to the 1960 census figures, there were 300,506 Negroes in Detroit in 1950, but in 1960, there were 482,223, an increase of 181,717, or 29.9%. A few questions will show the type of problems that migration brings to any city: What types of skills do migrant Negroes bring? Do they possess the kind of skills, such as possessed by electricians, plumbers, engineers, technicians, professionally trained, etc., in which there are shortages? Or, do they come as unskilled workers — adding to already too large unemployed labor force of unskilled workers? Do these migrants come with sufficient savings so that they can immediately purchase homes? Or, do they come under-educated, thus causing a dilution of existing education programs? These are real problems. Yet, freedom of movement is a constitutional grant and right.

"The adjustment to community life in a strange place is not easy for migrants. These people need help, understanding, and guidance as they are exposed, in every way, to a new environment which is culturally and industrially different from whence they have come. The migration of any people is a cultural crisis, a cultural explosion — thrust upon metropolitan cities — without the community climate or resources ready to effectuate a smooth and orderly transition. Migration is a process of passing through the crisis of rebirth."⁴

It is said that some migrants possess skills needed for the labor market. In such cases — if hiring is done on the basis of merit and fairness — such talents can be quickly utilized, and the community resources greatly enhanced. Moreover, Detroit must plan training programs whereby in-migrants can develop their talents into marketable skills. Here, again, public and private planning groups must realize and recognize that at the roots of the economic adjustment of the migrants is racial discrimination in employment. Public and private agencies must re-evaluate and re-access the problem of migration. We must get under one umbrella, all of the community resources at the port of entrance, so that these newcomers will not be allowed to drift, and add to our current social-ills.

³Un-Met Social Problems (Editorial by Francis A. Kornegay, Michigan Chronicle, January 25, 1961).

PROBLEM 2 EMPLOYMENT AND UNDER-EMPLOYMENT

"Denial of employment because of the color of a person's skin, his faith, or his ancestry, is a wrong of manifold dimensions."⁵

To secure a job, a position whereby one can adequately use his skills, talents, and training, not only brings economic returns but a pride, a joy, and self-realization. The end result, when these conditions are met, is a rich, growing and maturing community. But sadly, this is not the case in Detroit, there are hundreds of firms that do not employ Negroes at all. There are other firms that hire them in the usual way — janitors. Yet there are many large firms that hire people by the thousands, but have only a few Negroes in clerical jobs and fail to hire Negroes at all in semi and professional classifications. These firms advertise for workers, but despite our F.E.P. law, no serious effort, to date, has been effected to break their unfair employment practices. However, the community should recognize those firms and institutions that hire on the basis of merit. There are such firms here in Detroit, and their employment force is an example of Democracy in Action. Negroes have been given dignified jobs and their performance is as high as any other workers. "Employers and unions are still quite conservative, if not reluctant, to consider promoting Negroes to positions requiring supervision of white workers."*

Mention must be made that there are many unions which maintain classifications that have not as yet used Negro workers. Do we find Negro waiters and waitresses working in our hotels? Do we find Negroes accepted in all of our apprenticeable trades? Do we find Negro men driving soft drink trucks, milk wagons, bread trucks, beer trucks, etc.? The answer is "No" — Negroes must apply for every job any place where vacancies exist for which they have the qualifications.

"That Congress amend the Labor-Management and Disclosure Act of 1959 to include Title I thereof, a provision that no labor organization shall refuse membership to segregate or expel any person because of race, color, religion, or

⁴Some Concerns and Program Projections (Francis A. Kornegay at Detroit Urban League Board Meeting, October 13, 1960).

⁵Employment, p. 1, 1961, U.S. Commission on Civil Rights Report.

national origin."⁶ Anyone denied employment based on race, color, etc., should present his or her case to the Fair Employment Practices Commission in the Cadillac Square Building and, most importantly, there must be a complete follow through. **SOME FACTS —**

- (a) 60% of the unemployed are Negroes or 46,800;
- (b) G.N.P. (Gross National Product) equals 550 billion — Negroes should enjoy 55 billion — all things being equal —
 - (1) Discrimination in Employment — practiced against Negroes — robs the Negro of \$16 billion annually. 55% of what number \$20 billion equals what? It equals \$36 billion; Negro annual income is only \$20 billion;
- (c) Entry into white-collar positions does not provide, as yet, an opportunity for Negroes to move up into supervisory positions — which is directly related to increased income. Example: Few Negroes in industry pass the \$10,000 income level — far too few. Only "6,710 Negro families make \$10,000 and over — 8.1%";⁷
- (d) Lack of apprentice training for Negro youth. Less than 2% of those trained are Negroes and 75% of the 2% is relegated to the trowel trade — brick-laying, masonry, and plastering;
- (e) No discrimination in Government Contract is a wonderful tool to break employment barriers — but it must be made to work. It must have enforcement powers. And citizens must bring this to pass —
 - (1) President's Committee on Equal Opportunity — of which Hobart Taylor, Jr. is Executive Vice Chairman — must step up its efforts. Plan for Progress is all right — but I would rather say Make Progress, we already have too many plans.

Employers want from a top secretary to top engineer. But what about the hundreds of classifications in between? We have people today ready to fill these jobs. Last summer some firms hired high school graduates \$73.10 weekly, but refused to hire Negro high school graduates.

⁶Employment, p. 164, U.S. Commission on Civil Rights Report, 1961.

^{*}Profile of Critical Social and Economic Problems Facing Negroes in Detroit, p. 3 (February, 1961) Ernest L. Brown, Jr., Detroit Urban League.

PROBLEM ③ HOUSING AND URBAN RENEWAL

"Housing ... seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay."⁸ The most difficult road-block which keeps our cities segregated is housing. Segregated housing does not just happen, it is designed. "We shape our buildings and then our buildings shape us."⁹ It is the most serious threat to the future of American communities. Open occupancy should be public policy backed by the best social and physical planning obtainable. The urban renewal and slum clearance programs should lead the way in bringing about decent and fair standards in housing. However, safeguards must be built in by the way of nondiscrimination provisions in both the re-location and building programs — protecting the rights of people in the best attainable fashion in unit selection and placement. There is a need for fair housing legislation. An open housing market will give Negroes the privilege to buy, build, and rent in every direction of the city or suburbia. There is no other way. The solution of the housing containment will, in a long measure, improve integration in education as well as the quality of education. Neighborhoods will become vigorous and strong. The results of this kind of programming will strengthen the inherent concepts of citizenship rights, their responsibilities and their obligations.

SOME FACTS

- (a) Negroes are hemmed in by geographical boundaries;
- (b) Negroes are not able to purchase new and beautiful housing in suburbia;
- (c) Negroes cannot build because they cannot find land;
- (d) Negroes must rent absentee owned properties often run down and at excessive high rents;
- (e) Urban renewal has worked a serious disadvantage to the Negro businessman as well as to the Negro family. Relocation of Negroes is not carried out on an even dispersal. Urban renewal should provide and produce smooth and adequate transition from the old to the new;
- (f) One out of every six Negro dwellings is substandard as compared to one out of every 32 white dwellings;

⁷Research Division, Commission on Community Relations, p. 10, (June, 1962).

⁸Housing, p. 1, 1961 U.S. Commission on Civil Rights Report.

⁹Winston Churchill (From one of his speeches on Housing).

- (g) 38% of all Negro families own their homes as compared to 66% of all white families:

PROBLEM **4** EQUAL EDUCATIONAL OPPORTUNITY

"Educational Opportunity must be Equal for All!"¹⁰

Because the family is our best cultural carrier, the place where the child learns and forms ideas about his environment, the place where he will develop and grow, we must free these children of their inner horrors of "not belonging" and "not being wanted". To do this, our schools must adopt equality of opportunity for every child in the areas of: pupil assignment, curriculum development, adequate equipment, and teacher assignment. This philosophy must originate at the board level, be executed at the administrative level, administered at the local school level, included in every phase of the school's program, and when this is done, it will overflow into the community — enhancing our school-community relationships. The school system must point the way — rather than directed from without. Citizens must understand their obligations, duties, and responsibilities to every child: that desire and drive of children to realize their full potentials. Again, all must contribute his full share to this ongoing process of educational enrichment.

SOME FACTS

- (a) The recent committee appointed by the Board of Education, which studied this problem in many aspects for two years, reported that there are many glaring inequities in our Detroit schools especially in the Center District which affect seriously the education of Negroes;
- (b) The lack of top quality education poorly prepares the Negro student and makes his competition for jobs and higher educational attainment almost impossible;
- (c) Loss of the tax dollar will affect the quality of education too soon;
- (d) School Drop-Outs
 - (1) What is the drop-out rate in two of Detroit's high schools? Central — 1961 - 1962 — 238 drop-outs. 2372 average school census (percentage for Central High was 10.3); Osborn — drop-outs — 63. School census 1750 (percentage for Osborn High was 3.7).

¹⁰Equal Educational Opportunity, p. 5, Detroit Board of Education (March, 1962).

- (2) Little incentive for Negro youth to stay in school — receive little help from homes, neighborhood environment, and their community life fails to motivate them for higher education.

PROBLEM 5 HOSPITAL AND MEDICAL SERVICES

Nothing is dearer to a person than good health. It should be obtained at all costs. There should be no barriers that prevent people from enjoying good health. Community practices that lead to the fulfillment of adequate health facilities for all citizens are unequal and unfair in many respects. These practices are responsible, to some degree, for a higher mortality rate among Negroes as compared to whites. "In short, the access or lack of access to hospitals having adequate facilities reflect — favorably or unfavorably — upon the life span in every American community."¹¹ There is urgent need for all Detroit hospitals to accept their share of Negro interns, residencies, and Negro doctors on all staffs. Further, hospitals which retain their own nursing schools should make a positive and serious effort to recruit Negro girls in the same way and to the same degree as it does other young ladies. Without doubt, all nursing schools should accept all applicants who meet entrance requirements.

Patients should be assigned to wards, semi-wards, and private rooms without regard to race, color, creed, or national origin.

Another important area of hospital administration is the procurement of well trained personnel. In this respect, fair employment practices in hiring and upgrading should be the daily routine — rather than the exception.

Lastly, qualified Negroes should be selected to serve on hospital boards, councils, and committees. To assist in bringing this to pass is Urban League work.

The life span for Negroes is seven years less than that of whites. There is direct relationship of income to food, to housing, to health, etc.

^{11A} Study of Equal Opportunity in Eleven Detroit Area Voluntary Hospitals: Fourteen years later 1948 - 1962 (Community Services Department, Detroit Urban League, October, 1962) . . . George Henderson, p. 2.

PROBLEM **6** SOCIAL DISORGANIZATION

There is an imperative need not only to take a microscopic look at family disorganization, but to get at the roots of the causes and to unearth facts — as bare as they exist — completely free of any exaggeration or distortion. The strengthening of family life must have the attention of our total community resources. "Community and Government are invention of man and cannot wittingly or unwittingly, escape involvement in responsibility for the improvement of the human condition."¹²

Man is simply out of tune with his environment. Although crime is as old as time, its visitation upon a community has no respect for race, age, sex, affluence, or geography. Its abatement or its increase will depend on the degree to which the total community is willing to assure equality of opportunities in housing, employment, education, distribution of welfare, and equality of treatment by law enforcement officers. These problems of social disorganization attack first, our most basic unit of society — the Family. The disadvantaged family in our society, and that number is ever increasing, needs help, and needs it badly if Detroit is to maintain good posture and create the kind of image that will make the Detroit community one — and thus dynamic.

Broken homes and their many social currents — carry our Negro youth too fast into the ocean of juvenile delinquency. These currents must be checked. They must be redirected into the sea of calm, self-respect, self-image, security, and of worth.

SOME FACTS —

- (a) More Negro women than white become breadwinners because of necessity — rather than homemakers. One out of four Negro women with pre-school children is at work;
- (b) The rate of separation for Negro women is six times greater than that of whites. "Hence 80.1% of persons on relief are Negroes."¹³

¹²Goals for Americans, p. 263, Prentice-Hall, Inc. 1960.

PROBLEM 7 LEADERSHIP AND COMMUNICATION

From Ralph McGill's column — Detroit News (October 15, 1962), a businessman from Vicksburg, Mississippi writes as follows:

"I agree completely that Mississippi's present dilemma is largely due to lack of leadership."¹⁴ It is recommended that you read the article. The excellent series on "Negro Leadership in Detroit" written by William C. Matney of the Detroit News state serious facts that should point the way to a more cohesive togetherness. "Negro leadership in Detroit seems in perpetual flux."¹⁵

I believe in the indestructibility of matter, and therefore the continuity of life. It should then follow as the night the day that those of us in leadership positions have a deep responsibility and serious obligation to provide leadership activities and wholesome outlets for our children. Nothing just happens. Things are planned. We, I mean adults, and leadership agencies, both professional and volunteer, both church and service — must carry on leadership clinics and other planned programs to capture the talents of our young people.

There is a serious need to develop two-way communication outlets between all leadership. But most importantly, this leadership must generate a climate of trust, respect, acceptance, and full support. It is out of this needed and great reservoir of leadership that our community efforts — when crucial and critical problems arise — can be directed and from which positive forces can be marshalled.

There is another side of this coin, and it is so very important. The metropolitan press, and all news media should and must report what is happening to Negroes on a day-by-day basis, and not treat news about Negroes as "of special interest." There is enough happening in the so-called "Negro Community" to make daily news. I check the Women's Section, the Social Section, the Fraternal Section, the Church Section, the Health Section, the Business

¹³Welfare-Detroit (Department of Public Welfare, 1961 Annual Report — Table page 12, Race and Citizenship).

¹⁴Ralph McGill's Column, Detroit News, p. 16B (October 15, 1962).

¹⁵"Detroit Negro Leadership" — Article III, p. 1, Detroit News (October 16, 1962 issue), by William C. Matney.

and Financial Section — yes — even the Obituary Section of Sunday dailies and find them woefully void of news about Negroes who comprise 29.9% or 30% of our population. There is one question with one word: "Why?" When are we going to change to a more representative way of reporting the news about Negroes in our dailies? When this happens, and I believe it will, we will improve the image of Detroit's Negro faster than anything else. This is sorely needed if good will, genuine understanding, and better race relations are to grow to full maturity.

That we may have life, liberty, and the pursuit of happiness is truly our aim, our goal, and our hope. But that God will give us strong, courageous, secure, fearless, and able men in times like these, is my constant prayer. May I put it this way — We need men who will think right and straight; say it to the point and on time, and do the job with deliberate speed.

To bring about Equality of Opportunity for every American is our duty. We must help with all our hearts, and with all of our human resources.

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Wash. Post - 5/28/63

Civil Rights Pilot

It is a testimonial to the forthrightness and efficacy with which the Civil Rights Commission has carried forward its different mission that there are those on Capitol Hill who would like to demolish it. They would also, for the most part, like to demolish civil rights. The Commission has operated in this area as an indefatigable jogger of the national conscience and as a trail blazer for those who would completely eradicate from American life every form of discrimination based upon race or ancestry.

The Commission's lease on life comes to an end on September 30. It has been a short lease because Congress has been unwilling to grant it extensions for more than two years at a time since it was established in 1957. President Kennedy has now asked for an extension of at least four years. It is perfectly plain that the Commission will be needed for a great deal longer than this; it ought to be given permanent status to help it hold a staff together and do its work efficiently.

Under extremely tough-minded and realistic Commissioners and a staff director, Berl Bernhard, of exceptional drive and devotion, the Civil Rights Commission has won the confidence of Negro leaders and has rendered invaluable public service in exposing the inequities to which Negroes are subjected. It has a vital job to perform in coordinating the civil rights efforts of all organizations, public and private, Federal and local, and in focusing attention on dangerous trouble spots. The most important work of this valuable agency lies ahead of it.

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THURSDAY, MAY 23, 1963



Prolong The Civil Rights Commission

As expected, the U. S. Civil Rights Commission's April suggestion that President Kennedy consider withholding federal funds from Mississippi is being turned, in a Senate subcommittee hearing, against the Commission's very life. The commission, established by the Civil Rights Act of 1957, expires this fall. Hearings on a bill to prolong its life four years (S-1117) opened this week in Senator Ervin's subcommittee of the Senate Judiciary Committee. Thus a North Carolina senator is a leading player in the drama.

The first day's hearings witnessed an exchange between Senator Ervin, who called the commission's April proposal "so unwise that it is almost beyond comprehension," and Senator Philip Hart of Michigan, who heartily approved of economic penalties for Mississippi.

Senator Ervin would abolish the commission; Senator Hart would savor its every whim, however misguided. We think both positions are extreme and mistaken.

Senator Ervin is certainly correct in saying that the Civil Rights Commission blundered when it sought economic reprisals for Mississippi. But it does not follow that a single lapse of decorum is any reason for abolishing what the senator calls "a life already too long." Senator Ervin, indeed, knows that all government agencies blunder occasionally; he knows, also, that the punishment should fit the crime. And we hope he realizes that abolition of the commission is not a fitting punishment.

After all, it is not as if the Civil Rights Commission could penalize a stubborn state on its own motion. It has the power of recommendation and report alone; and the Mississippi recommendation, as a matter of fact, got very short shrift from both Mr. Kennedy and the Justice Department.

Against April's windmill-tipping blunder, which was politically, economically and morally unthinkable, one must balance the service the commission renders through its state advisory committees. These committees have conscientiously laid bare the failures of the laws to protect citizens equally.

Notable in this respect is the work of the North Carolina advisory group under Greensboro's McNeill Smith, which the assistant U. S. attorney general recently designated the best in any of the 50 states.

In North Carolina, of all places, the Civil Rights Commission cannot be thought of as a loathsome abstraction, working at great distance from local affairs. It should be seen merely as the national publicity agent of a network of intensely local bodies, which in turn work to reveal areas in which "equal protection of the laws" can be improved in and by the states themselves. It might be called, with no great stretch of the imagination, the best friend states' rights have. For it is showing those states which are open-minded enough to listen where they can themselves improve their administration of laws.

If Senator Ervin and other Southerners in the Senate seize at straws to try to kill off the Civil Rights Commission, it will be a sad end to a good story. The good story is that states like North Carolina can and will take mature and searching looks at their own shortcomings in justice, and throw remedial light on those shortcomings.

To tear down this apparatus when its work has barely begun will be a short-sighted confession that North Carolina (and the other Southern states) can't stand the glare. We don't know about Mississippi and Alabama; but we do know this is not true of North Carolina. Mercy, senatorial executioners.

N. Y. Times - 5/27/63

Civil Rights Commission

The Civil Rights Commission has served as "a national civil rights clearing house providing information, advice and technical assistance to any requesting agency, private or public." The definition of its task is President Kennedy's.

For more than five years the commission has fulfilled its statutory mandate: investigating deprivations of voting rights and denials of equal protection of the laws in education, employment, housing and the administration of justice. Now the Administration asks that the commission's life be extended four years. We agree with some Republicans who would make it a permanent agency.

The Civil Rights Commission deserves a separate, and at least equal, standing in the Federal Government with the Civil Rights Division of the Justice Department. One is engaged in major and continuing studies with valid powers of investigation and persuasion; the other is charged with enforcement of the law. Both can and should work hand-in-hand to carry out the decisions of the courts. Both are essential in the struggles—moral and legal—that still lie ahead in the field of civil rights.